(10)

No. 91-1353-CSX
Status: GRANTED

Title: Thomas F. Conroy, Petitioner
v.
Walter Aniskoff, Jr., et al.

Docketed:
February 20, 1992

Court: Supreme Judicial Court of Maine

Counsel for petitioner: Klonoff,Robert H.

Counsel for respondent: Mitchell,John A., Sylvester,Torrey A., Cuddy,Kevin M.

Entry	Date	Note	Proceedings and Orders
1	Feb 20 1992	G	Petition for writ of certiorari filed.
2	Mar 17 1992		Brief of respondents Walter S. Aniskoff, et al. in opposition filed.
3	Mar 25 1992		DISTRIBUTED. April 17, 1992
4	Apr 20 1992	P	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
6	Jun 2 1992	X	Brief amicus curiae of United States filed.
5	Jun 3 1992		REDISTRIBUTED. June 19, 1992
7	Jun 22 1992		Petition GRANTED.
			**********
8	Jul 16 1992		Record filed.
		*	Original proceedings Supreme Judicial Court of Maine andMaine Superior Court.
10	Jul 21 1992		Order extending time to file brief of petitioner on the merits until August 28, 1992.
11	Aug 21 1992		Brief amicus curiae of United States filed.
12	Aug 27 1992		Brief amicus curiae of Veterans of Foreign Wars of the United States filed.
13	Aug 27 1992		Joint appendix filed.
14	Aug 27 1992		Brief of petitioner Thomas Conroy filed.
15	Sep 3 1992	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
17	Sep 28 1992		Brief of respondents Walter S. Aniskoff, Jr., et al. filed.
16	Oct 5 1992		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
18	Oct 28 1992		Reply brief of petitioner filed.
19	Nov 20 1992		SET FOR ARGUMENT MONDAY JANUARY 11, 1993.(4TH CASE).
20	Nov 23 1992		CIRCULATED.
21	Jan 11 1993		ARGUED.

91-1353

CASE NO. _____

UNITED STATES SUPREME COURT

OCTOBER TERM, 1991

THOMAS F. CONROY, PETITIONER

v.

WALTER S. ANISKOFF, JR.,

THE INHABITANTS OF THE TOWN

OF DANFORTH, MAINE, AND

H.C. HAYNES, INC., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME JUDICIAL COURT OF MAINE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether §525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. Appendix §525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

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STATUTES AND AUTHORITIES

STATUTES

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS IN THE INSTANT CASE

The opinion of the Superior Court of the State of Maine was rendered on November 6, 1990, and is contained in the Appendix. The opinion of the Supreme Judicial Court of Maine was rendered on November 27, 1991, and is contained in the Appendix. It may be found at 599 A.2d 426 (Me. 1991).

JURISDICTION

On November 27, 1991, the Supreme Judicial Court of Maine, entered a judgment affirming the decision of the Maine Superior Court entered on February 19, 1991.

This Court has jurisdiction to grant a Writ of Certiorari because the Supreme Judicial Court of Maine, the court of last resort in the State of Maine, has decided a federal question in a way that conflicts with the decisions of other state courts of last resort and with the decisions of several United States Courts of Appeals. Further, this Honorable Court has jurisdiction because the Supreme Judicial Court of Maine, has decided an important question of federal law in a

way which conflicts with the applicable decision of this Court.

28 U.S.C. §1257 confers jurisdiction on this Court to review the judgment in question by Writ of Certiorari.

THE STATUTE INVOLVED

§525. Statutes of limitations as affected by period of service

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs

after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

STATEMENT OF THE CASE

The Petitioner was on active duty with the United States Army from November 26, 1966, through the date of trial, without interruption. He owned two lots in the Town of Danforth, Maine, on which minimal taxes were assessed. Despite the Petitioner's keeping the Town of Danforth advised of his changing addresses, he received no tax bills for the years 1984, 1985, and 1986. The Town of Danforth had continued to send them to an earlier address and they did not reach him at his many duty stations throughout the world. The Town of Danforth then seized his land for taxes and sold it pursuant to the law of the State of Maine. Under Maine law, a lien is placed on the

property and the owner has 18 months in which to redeem before title ripens in the municipality. 36 M.R.S.A. §943. The Maine statute provides a procedure, employed by the Town of Danforth, by which the municipality's tax title may be perfected and the owner's right to redeem the property may be foreclosed without actual notice to the property owner, provided notice is mailed to the property owner's "last known address." Such notice was mailed, in this instance, to Petitioner's former address as reported to the Town of Danforth in 1983. Upon foreclosure, title vests absolutely in the municipality, and the municipality is not required to account for any proceeds from its sale or use of the property. Donaghy v. Leighton, 351 A.2d

125 (Me. 1976). At trial the parties stipulated that all of the Maine statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed and that, were it not for §525 of The Soldiers' and Sailor's Civil Relief Act of 1940, as amended, the Town would have perfected title in this case.

The Town of Danforth acted despite the provisions of The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. §501 et. seq. Respondents, Walter Aniskoff, Jr. and H. C. Haynes, Inc., purchased the non-existent interest of the Town of Danforth and each received a quitclaim deed therefor. Despite subsequent notice of the Petitioner's ownership and lack of consent, H.C. Haynes, Inc.

clear-cut timber on the land and carried it away.

The Petitioner's action sought restoration of his title in the land and statutory damages and costs for trespass. The Petitioner raised the applicability of §525 of The Soldiers' and Sailors' Civil Relief Act in his complaint. The Maine Superior Court held that §525 of The Soldiers' and Sailors' Civil Relief Act did not apply to protect the Petitioner from the seizure and sale of his land unless he could demonstrate that his military service caused him some hardship which rendered him unable to pay his taxes. On appeal to the Supreme Judicial Court of Maine, the only issue raised by the Petitioner, was the protection afforded him by §525 of The Soldiers' and Sailors' Civil Relief Act. The Supreme

Judicial Court of Maine, on November 27, 1991, affirmed the decision of the Maine Superior Court.

ARGUMENT

In Le Maistre v. Leffers, et. al., 333 U.S. 1 (1948), this Court held that the provisions of §525 of The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, protected a serviceman who owned land in Florida on which taxes became delinquent from seizure and sale of the property by local taxing authorities for delinquent taxes while he was on active duty in the United States Navy. This Court stated that the provisions of §525 were clear and unequivocal and protected a serviceman from seizure of his real estate for taxes and the subsequent sale to pay those taxes. Despite this decision, the Supreme Judicial Court of Maine held to the contrary and ruled

that §525 did not offer your Petitioner that protection.

The United States Courts of Appeals for the First, Third, Fourth, Sixth, and Tenth Circuits, as well as the United States Claims Court, have held that §525 is absolute and no showing of prejudice is required. The mere status of being on active duty in the United States Armed Forces is all that is required. Mouradian v. The John Hancock Companies, 930 F.2d 972 (1st Cir. 1991)(dictum); Mason v. Texaco, Inc., 862 F.2d 242 (10th Cir. 1988); Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975); Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Wolf v. C.I.R., 264 F.2d 82 (3rd Cir. 1959); Bickford v. U.S., 656 F.2d 636 (Ct. Cl. 1981). The United States Court of Appeals for the Fifth

Circuit has held to the contrary and required of the serviceman a showing that his military service prejudiced him in his ability to attend to his private business. Pannell v. Continental Can Company, Inc., 554 F.2d 216 (5th Cir. 1977). Furthermore, in a recent unpublished opinion, the United States Court of Appeals for the Fourth Circuit apparently overruled Ricard v. Birch without referring to it. Townsend v. Secretary of Air Force, 947 F.2d 942 (4th Cir. 1991)(text on Westlaw).

In addition, two state court decisions have had held that a showing of prejudice by the service member was necessary. Bailey v. Barranca, 488 P.2d 725 (N.Mex. 1971) and King v. Zagorski, 207 So.2d 61 (Fla. 1968). Other state courts have held precisely the

contrary, that is, that no showing of prejudice is necessary. See e.g. Peace v. Bullock, 40 So.2d 82 (Ala. 1949); King v. First Nat Bank of Fairbanks, 647 P.2d 596 (Ak. 1982); Syzemore v. County of Sacramento, 127 Cal. Rptr. 741 (1976); Illinois Nat. Bank of Springfield v. Gwinn, 61 N.E.2d 249 (Ill. 1945); McCance v. Lindau, 492 A.2d 1352 (Md. 1985); Day v. Jones, 187 P.2d 181 (Ut. 1947).

If other sections of The Soldiers' and Sailors' Civil Relief Act make "hardship" a relevant factor, then it is significant that §525 does not. For example, attention is respectfully invited to §§520, 521, 522, 523, 526, and 531. Since Congress made hardship a factor in all of those sections, Congress could have made hardship a

factor in §525. That it chose not to do so is of extreme importance.

The opinion in McCance v. Lindau, 492 A.2d 1352 (Md. 1985), contains a detailed analysis of the history of §525 and comes to the conclusion that if the United States Congress had intended to require the servicemen to demonstrate hardship under §525, it would have been a simple matter for Congress to have added that provision. As the Court in McCance pointed out, more than sixty years have elapsed since §525 was first enacted. If there had been any discontent with the application of that section, Congress could have either repealed or amended it. Congress has declined to do so, however, despite its revisions of The Soldiers' and Sailors' Civil Relief

Act numerous times since its enactment.

On March 18, 1991, President Bush signed the Soldiers' and Sailors' Civil Relief Act Amendment of 1991. Pub. L. No. 102-12, 102d Congress, 1st Sess. 105 Stat.32. As a result of the Persian Gulf War, Congress once again considered §525. Once again it left it untouched except for substituting "October 6, 1942" for "the date of enactment of The Soldiers' and Sailors' Civil Relief Act Amendments of 1942." Since Congress changed §525 slightly, the omission of a further amendment requiring a demonstration of hardship clearly was not through oversight. Indeed, Congress enacted two new provisions to protect service personnel which require no showing of hardship. In addition to the existing protection

of §521 concerning stays of actions, Congress provided that all civil actions then pending involving members of the armed forces were stayed until June 30, 1991, without any requirement to demonstrate hardship. P.L. 102-12, §6(a). Congress further enacted a new section which provides that those personnel providing professional services will be eligible to have their professional liability policies suspended during active service without regard to hardship. Under this provision liability insurance carriers may not charge premiums for professional liability coverage during active service by the insured. Carriers must either refund any premiums paid for future coverage or credit the premiums toward premiums to be paid

after active service ends. 50 U.S.C. App. §592. Again Congress required no demonstration of hardship just as it has required no showing of hardship to invoke the benefits of §525.

Congress is certainly aware that some provisions of The Soldiers' and Sailors' Civil Relief Act require a showing of hardship and some do not; nonetheless, Congress has left §525 intact and essentially unchanged. Section 525 is triggered by the status of the service member. Section 525 has never contained a requirement of hardship and does not now contain such a requirement. If Congress had wished to overturn the majority rule and require a demonstration of hardship to invoke the protection of §525, it would have done so. That it has chosen not to

do so must not be lightly disregarded.

In view of the foregoing, Petitioner respectfully submits that it is entirely appropriate for this Honorable Court to grant his petition for a Writ of Certiorari to the Supreme Judicial Court of the State of Maine in order that this Court may resolve the conflicts which exist between the United States Circuit Courts of Appeals on this issue and between the decision of the Maine Supreme Judicial Court and this Honorable Court's decision in Le Maistre v. Leffers and in order to afford Petitioner the protection granted by the statutes of the United States embodied in The Soldiers' and Sailors' Civil Relief Act. The Petitioner therefore respectfully requests that this Honorable Court

grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-88-04

Thomas F. Conroy, Plaintiff vs. Walter Aniskoff, Jr. and The Inhabitants of the Town of Danforth Defendants	)	DECISION AND ORDER

Docket No. CV-88-04

Thomas F. Conroy, Plaintiff vs. H.C. Haynes, Inc., Defendant	)	DECISION AND ORDER

This matter comes before this Court as two separate causes consolidated together, pursuant to M.R. Civ. P. 42(a), for the purposes of the present jury waved trial. Trial was held before this Court on September 26, 1990, at which time all four parties

appeared through their respective counsel. All parties submitted to this Court appropriate memoranda of law in support of their respective positions. After consideration of the entire record, as well as all the evidence submitted, including pertinent stipulations, this Court finds as follows.

FACTS

The parties to this matter do not significantly dispute the pertinent facts.

Plaintiff, Thomas Conroy, is a Colonel in the United States Army. He has been on continuous active duty with the Army since November 26, 1966. To date, plaintiff is still on active duty. Since entering the Army, plaintiff has been stationed at the following locations:

Fort Campbell 11/67-9/67

Republic of Vietnam ... 11/67-11/68

Eglin AFB, FL 12/68-10/70

Fort Benning, GA 10/70-7/71

Fort Devens, MA 8/71-7/73

Boston Army Base, MA .. 7/73-6/75

Fort Leavenworth, KS .. 7/75-7/76

Republic of Korea 8/76-8/77

Fort Devens MA 9/77-5/80

Westover AFB MA 6/80-7/82

Fort Devens MA 8/82-1/86

Rome, Italy 1/86-8/86

Brunssum, Netherlands . 8/86-present

On or about May 1, 1973, while stationed at Fort Devens, MA., plaintiff purchased the real estate at issue here and located in Danforth, Maine. Plaintiff paid all real estate taxes due on the property from the date of purchase until 1984. Significantly, plaintiff paid said taxes while

stationed in Korea. Though stationed at Fort Devens, Ma., during two of the years in question, plaintiff claims that he did not receive the tax bills assessed and due on his Danforth property for the years of 1984 and 1985. Concerned, plaintiff claims that in late 1985 he forwarded written correspondence to Danforth regarding these two bills but never received a reply. Upon his move overseas, plaintiff took no further action in 1986.

Due to expired tax liens assessed against plaintiff's property for the years of 1984, 1985, and 1986, Danforth sold said property to Defendants Aniskoff and Haynes, Inc. The record amply demonstrates that Danforth did send notices to plaintiff at his Fort Devens address regarding the tax bills

for these three years; all were returned as "undeliverable as addressed and unable to forward." The Town never received notice that plaintiff had changed his address. The Town also sent plaintiff notices of tax liens and impending automatic foreclosure which were also returned as undelivered. The Town, on or about December 22, 1986, sold plaintiff's property to said defendants.

The following stipulation entered into on September 29, 1990, by all parties is also significant:

> It is hereby stipulated that all the statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this

particular instance, including notice and recording requirements; and that were it not for the Soldiers and Sailors Civil Relief Act, the Town title would have been perfected in this particular instance.

DISCUSSION

Plaintiff's sole claim in this action is that the acquisition of this property by the Town and subsequent sale of said property to defendants herein is void pursuant to 50 U.S.C. App. § 525. He claims that because § 525 tolls the redemption period provided by state law, the Town could not acquire valid title to his property. This Court notes that the

issue regarding the interpretation and application of 50 U.S.C. App. § 525 to the facts underlying this matter is both novel and one of first impression within this federal circuit and this state.

Title 50 U.S.C. App. § 525, § 205 of the Soldiers and Sailors Civil Relief Act (SSCRA), reads in pertinent part:

Statutes of Limitations as affected by period of service.

The period of military service shall not be included in computing any period now or hereafter to be limited by law...for the bringing of any proceeding in any court, board, bureau. commission,

department or other agency of government...against any person in military service...whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of [this Act] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

This Court notes that judicial interpretation of this statute has developed a split of authority. Some courts have interpreted the relevant language as creating an absolute bar to the running of any limitations period; military service of any kind tolls any, limitations period, the pendency of which period then runs again from the date that military service is terminated. See, e.g., Le Maistre v. Leffers, 333 U.S. 1 (1948); Mason v. Texaco, Inc., 862 F.2d 242 (10th Cir. 1988); Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Bickford v. United States, 656 F.2d 636 (Ct.Cl. 1981); McCance v. Lindau, 492 A.2d 1352 (Md.App. 1985); Syzemore v. County of Sacramento, 127 Cal.Rptr. 741 (Cal.App.3d 1976). The interpretation of § 525 adopted in this line of cases is founded on the general

principle of statutory interpretation providing that where the language of a statute is clear, it is to be applied according to its plain meaning; courts should not re-write statutes no matter how absurd the result. See, e.g., McCance, 492 A.2d at 1356-57.

Other courts decline to adopt this rigid interpretation and instead hold that, with respect to career military servicemen, no limitations period is tolled merely because of military service status; limitations periods may be tolled upon a showing that said military service resulted in hardship excusing timely legal action. See, e.g., Pannell v. Continental Can Co., Inc., 554 F.2d 216 (5th Cir 1977); Bailey v. Barranca, 488 P.2d 725 (N.M. 1971); King v. Zagorski, 207 So.2d 61 (Fla. Dist. Ct. App. 1968). The

interpretation of § 525 adopted in this line of cases is alternatively based on the fact that the SSCRA was only intended to provide relief for one subject to military service by conscription who is called away from civilian life to distant lands and faced with threats of war. See, e.g., King v. Zagorski, 207 So.2d at 64-65. These courts find the tolling of limitations periods applicable to career military servicemen not handicapped by their military status to be absurd and illogical. See, e.g., id. at 67; Bailey, 488 P.2d at 728.

This Court discerns another critical difference between the two juxtaposed line of cases. The former can all be distinguished factually from the latter cases. In the former line of cases, with the exception of Le

Maistre, § 525 is used as a shield to protect the serviceman from the application against him of limitations periods which would have barred him from asserting otherwise untimely non-real estate related causes of action. See Mason, 862 F.2d at 242 (products liability case involving personal injury and wrongful death claims); Ray, 464 F.2d at 452 (automobile collision resulting in personal injury); Bickford, 656 F.2d at 636 (military back-pay and allowances); McCance, 492 A.2d at 1352 (assault, assault and battery, and negligence claims); Syzemore, 127 Cal.Rptr. at 741 (personal injury claim against city).

This Court also believes that Le Maistre is distinguishable from the instant case on the basis of its facts. See 333 U.S. at 1. Although the case

clearly involved the application of § 525 to a limitation of redemption period, it also just as clearly involved a non-career military serviceman. Id. at 3. The petitioner there was on active duty from August 18, 1942, until only December 18, 1945. Id. Said duty occurred during times of actual war. This Court interprets La Maistre to rest firmly on the fact that it involved a non-career military serviceman who was called to defend his country during war ; "[T]he Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." Id. at 6.

This Court is persuaded by the cardinal rule of statutory construction that demands that statutes be interpreted to avoid absurd, unreasonable or illogical results. See

e.g., State v. Rand, 430 A.2d 808, 817 (Me. 1981). As the Bailey and King courts have so forcefully recognized:

> Mr. Bailey's contention, distilled to its essence, is that regardless of all other factual and legal considerations, by virtue of the above quoted statute, he must automatically prevail. If his position be meritorious, it would mean that a career service person could buy real estate, ignore and disregard his tax responsibilities for perhaps thirty years and then at his leisure during

the redemption period following discharge, reclaim the property.

Bailey, 488 P.2d at 728.

> To permit a tax delinquent to finally redeem under such circumstances would be tantamount to giving a license to a career service man to acquire real property and then with impunity refuse to pay taxes thereon for so long as he should elect to remain in the service, plus six months thereafter; while casually weighing whether his investment was worthwhile....Such interpretation would give a

career man an unwarranted weapon not intended by the act.

King, 207 So.2d at 67. Even the McCance court recognized the absurdity created by its interpretation:

> In holding that § 525 is to be applied unconditionally to those on active military duty, we are cognizant of the possibility that absurd results may ensue. Conceivably, a career military serviceman could for any reason or for no reason at all wait 30 years or more before filing a law suit. The Damoclean sword, suspended by a single section of the SSCRA over

> the head of the civilian populace, was placed there by Congress. It is for Congress to sheath or remove that sword, if it so desires.

McCance, 592 A.2d at 1357.

Accordingly, this Court interprets § 525 to be of limited applicability. In the case of a career military serviceman, § 525 will toll the running of a redemption period only where the serviceman can show a hardship caused by active duty in the military. In the present case, this Court finds that plaintiff is a career military serviceman. As such, plaintiff has made no such hardship allegation. Nor did he present any evidence from which this Court might infer that active duty in the military created such a hardship.

Accordingly, SSCRA § 525 affords plaintiff nō relief from the Town's acquisition and subsequent sale of his Danforth, Maine, property.

WHEREFORE, the entry is:

This Court finds in favor of defendants in both matters CV-88-04 and CV-88-78. Accordingly, both CV-88-04 and CV-88-78 are dismissed.

DATED: Nov. 6, 1990

/s/_____
Eugene W. Beaulieu
Justice, Superior Court

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 6005
Law Docket No. WAS-90-575

THOMAS F. CONROY

v.

TOWN OF DANFORTH et al.

Argued September 3, 1991
Decided November 27, 1991

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, and COLLINS, JJ.

PER CURIAM

Thomas F. Conroy, who is now a colonel in the United States Army and has been on continuous active duty since 1966, brought the present action in the Superior Court (Washington County, Beaulieu, J.) seeking to quiet title to certain land in Danforth that the Town of Danforth had purported to acquire from him by statutory foreclosure of a tax lien mortgage for nonpayment of taxes. In the action, which also sought damages for trespass, Conroy joined as additional defendants two private parties to whom the Town had sold the land by quitclaim deed after the statutory 18-month period of redemption had expired. For the purpose of this action, the parties made the following stipulation:

[A]ll of the statutory

proceedings allowing the Town to acquire property for nonpayment of taxes were properly followed in this particular instance, including notice and recording requirements; and...were it not for the Soldiers'and Sailors' Civil Relief Act [of 1940, as amended, 50 U.S.C. App. §§ 501-591 (1988)], the Town's title would have been perfected in this particular instance.

Rejecting Conroy's contention, the court ruled in a full opinion that the Soldiers' and Sailors' Civil Relief Act did not protect Conroy from the running of the 18-month redemption period. The court accordingly entered

judgment for the Town of Danforth and the other defendants.

As the sole issue on his appeal to this court, Conroy challenges the Superior Court's interpretation of the Soldiers' and Sailor's Civil Relief Act. We are evenly divided on that issue.

Accordingly, the entry is:

Judgment for defendants affirmed by an evenly divided court.

All concurring.

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(2)

No. 91-1353

In The

Supreme Court of the United States

October Term, 1991

THOMAS F. CONROY,

Petitioner,

vs.

WALTER S. ANISKOFF, JR., THE INHABITANTS OF THE TOWN OF DANFORTH, MAINE, AND H.C. HAYNES, INC.,

Respondents.

On Petition for Writ of Certiorari to the Supreme Judicial Court of Maine

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QUESTION PRESENTED FOR REVIEW

Whether § 525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. Appendix § 525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

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Respondents.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Maine

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The petitioner is a full colonel and a career military officer who has been on continuous active duty with the United States Army from November 1966 through the date of trial. In 1973, petitioner purchased two lots of real property in the Town of

Danforth, Maine. Following his acquisition of the real property, petitioner paid taxes to the Town of Danforth, notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe, and the Far East. The petitioner was stationed in Korea in 1977 but still received his tax bill and paid it. The last tax bill the petitioner received and paid was for 1983 real estate taxes in Danforth, Maine. Petitioner did not pay his real estate taxes for the Danforth, Maine parcels for the years 1984, 1985, and 1986. In 1987, petitioner received a notice from the Clerk of the Town of Danforth, Maine, that the property was sold for unpaid taxes. The lots owned by petitioner were unimproved parcels with no buildings on them. The land was not used for professional or agricultural purposes.

In addition to the property which is the subject of this litigation, petitioner owns property in South Portland, Maine, and has paid taxes on it since 1964.

As a result of petitioner's failure to pay his real estate taxes, the Town of Danforth acquired the land and sold it pursuant to the law of the State of Maine. The parties have stipulated that the Town of Danforth "followed normal procedures, filed tax liens, and had it not been for Colonel Conroy's status, the procedures would have been entirely proper." Subsequent to the Town's foreclosure, respondents, H.C. Haynes, Inc. and Walter Aniskoff, Jr., independently acquired the parcels from the Town of Danforth. H. C. Haynes, Inc., specifically acquired its parcel with the understanding that the Town had acquired it because the former owner had failed to pay real estate taxes. Respondents Haynes and Aniskoff did not know that the prior owner of the property was a member of the military. Respondents, H. C. Haynes, Inc. and Walter Aniskoff, Jr. were good faith purchasers for value.

Following trial, the Maine Superior Court determined that

50 U.S.C. App. § 525 (Soldiers' and Sailors' Civil Relief Act) did not protect petitioner, a career serviceman, from the seizure and sale of the Danforth, Maine parcels unless he could demonstrate that his active military service resulted in a hardship which excused his failure to timely pay his taxes. Petitioner did not allege nor did he demonstrate any evidence from which the court could infer that his active duty in the military created a hardship. The Maine Supreme Judicial Court affirmed the Superior Court by an equally divided court. Petitioner's Petition for Writ of Certiorari to this Court followed.

REASONS FOR DENYING THE WRIT

I.

The Maine Supreme Judicial Court's decision affirming the trial court's determination that the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 525, does not toll the statutes of limitations for the redemption of real estate for a career serviceman, absent a showing of hardship resulting from the military service is consistent with the decisions of other state courts, the federal courts of appeal and a prior United States Supreme Court decision.

The Soldiers' and Sailors' Civil Relief Act was promulgated as a result of pressure associated with the first World War in 1918 and was constitutionally justified in order to protect soldiers from suit during war. *See Pierrard v. Hoch,* 191 P.2d 328 (Or. 1920). Section 510 states the purpose of the Act, in part, as follows:

> In order to provide for, strengthen, and expedite the national defense *under the emergent conditions* which are threatening the peace and security of the United States . . . provision is made to suspend enforcement of civil liabilities in certain cases . . .

> and to this end the following provisions are made *for the temporary suspension of legal proceedings* and transactions which may prejudice the civil rights of persons in such service.

(Emphasis added).

By his Petition, petitioner requests this Court to address the question of the application of 50 U.S.C. App. § 525 to a career officer who has failed to pay real property taxes and who has demonstrated no showing of hardship from his military service. For the reasons set forth below, it is unnecessary for this Court to accept petitioner's question since the decision of the Maine Supreme Judicial Court is consistent with existing case law on the precise question presented.

Several courts have had the opportunity to determine whether 50 U.S.C. App. § 525 is an absolute bar to the running of any statutes of limitations period or whether in the case of a career military serviceman the limitation periods may be tolled only upon a showing that the military service resulted in a hardship excusing timely legal action. The Maine Supreme Judicial Court's decision is consistent with other federal and state court decisions requiring a showing of prejudice by the service member that his active military service inhibited his ability to be current on his real estate taxes.

Nearly all the cases relied on by the petitioner which support the proposition that § 525 is absolute and that no showing of prejudice is required are distinguishable from the case before this Court. While there is a line of cases which support the proposition that the mere status of being on active duty is all that is necessary to toll the statute of limitations, those cases involve protection of the serviceman from the application of limitation period which would have barred the serviceman from asserting otherwise

untimely non-real estate causes of action. The cases cited by petitioner offer no support to his Petition before this Court since they are factually dissimilar to the case at bar with the exception of *Le Maistre v. Leffers*, 333 U.S. 1 (1948) which is otherwise distinguishable. None of the cases cited by petitioner discuss the statute of limitations issue relative to the serviceman's failure to pay real estate taxes (Petitioner's Brief at 15-16). In *Mouradian v. The John Hancock Cos.*, 930 F.2d 972 (1st Cir. 1991), a serviceman sued his former employer for wrongful termination. In *dictum*, the First Circuit merely cited a law review article which opined that the "prevailing interpretation" of the Soldiers' and Sailors' Civil Relief Act required the tolling of limitations period during any period of military service. The decision did not discuss that proposition relative to real estate redemption actions. In *Mason v. Texaco, Inc.*, 862 F.2d 242 (10th Cir. 1988), the Tenth Circuit tolled that statute of limitations during military service and allowed a products liability, personal injury, and wrongful death action to be brought by a serviceman following his discharge from the service. In *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975), the Court tolled the statute of limitations and permitted a wrongful death action brought by survivors against military persons following his discharge. The other cases cited by petitioner are dissimilar and have no relevance to the question here: *i.e.*, *Ray v. Porter*, 464 F.2d 452 (6th Cir. 1972) (personal injury action resulting from a motor vehicle acident brought by military service person); *Wolf v. C.I.R.*, 264 F.2d 82 (3rd Cir. 1959) (stay of tax court proceeding is mandatory during term of military service); *Bickford v. United States*, 56 F.2d 636 (Ct. Cl. 1981) (military back pay and allowances). Since none of the cases cited by petitioner addressed the issue of tolling the statute of limitations for a career serviceman who failed to pay his real estate taxes, the cases cited by petitioner are not persuasive here.

Those courts which have directly considered the issue of whether the statute of limitations is tolled with respect to a

redemption of real estate as a result of failure to pay taxes are fact specific. The only United States Supreme Court case which addressed the issue of real estate redemption is *Le Maistre v. Leffers*, 333 U.S. 1 (1948) and this Court did not address the issue of a career serviceman. In *Le Maistre* this Court opined that a military serviceman had the benefit of the tolling of the statute of limitions as long as he was in active military service during a time of war. This Court specifically noted that "as we indicated on another occasion, the Act must be read with an eye friendly to those who have dropped their affairs to answer their country's call." *Le Maistre* at 6. It is clear that this Court sought to protect the interests of the serviceman during the brief period he served during a time of war. That is not the case here since petitioner is a career military officer who was not prejudiced by his military service. As the trial court in this case noted, the *Le Maistre* Court dealt with the rights of a non-career serviceman. The facts of *Le Maistre* do not support the petitioner's position and have limited application here because the facts are distinguishable from that of the petitioner since he was not actively engaged in a war.

Those cases which have dealt with real estate taking outside the facts of *Le Maistre* (short term soldier and war time) have attempted to balance the significant interests of the military and civilian populations with reference to stability in the conveyance of real estate. This issue is addressed in the following cases and properly resolved: *King v. Zagorski*, 207 So.2d 61 (Fla. 1968) (denying a soldier redemption of property purchased sixteen (16) years earlier with no claim of ignorance, state laws, or consequences of non-payment of taxes); *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971) (denying retired soldier protection for failure to pay tax on property purchased while a career soldier when he knew it was subject to tax and sale for non-payment); *see also, Pannell v. Continental Can Co., Inc.*, 554 F.2d 216 (5th Cir. 1977) (career soldier of 31 years not benefiting from the Soldiers' and

Sailors' Civil Relief Act with no evidence of hardship associated with military service). These cases have all been resolved in favor of the integrity of the real estate system and denying a special status to the military landowner simply because he is in the military. The position advanced by petitioner would lead to an "absurd and illogical" result if applied here. *See Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971); *King v. Zagorski*, 207 So.2d 61 (Fla. Dist. Ct. App. 1968). If § 525 acted as an absolute bar, the title to any real estate owned by a serviceman would remain unsolved for good faith purchasers who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment. The courts have recognized this absurdity.

> Mr. Bailey's contention, distilled to its essence, is that regardless of all other factual and legal considerations, by virtue of the above quoted statute, he must automatically prevail. If his position would be meritorious, it would mean that a career service person could buy real estate, ignore and disregard his tax responsibilities for perhaps 30 years and then at his leisure during the redemption period following discharge, reclaim the property. *Bailey v. Barranca*, 488 P.2d 725, 728 (N.M. 1971). To permit a tax delinquent to finally redeem under such circumstances would amount to giving a license to a career service man to acquire real property and then with impunity refuse to pay taxes there on for so long as he should elect to remain in the service, plus six (6) months thereafter; while casually weighing whether his investment was worthwhile . . . Such interpretation would give a career man unwarranted weapon not intended by the Act.

King v. Zagorski, 207 So.2d 61 (Fl. Dist. Ct. App. 1968).

The regularity of real estate practice, the reliance of municipalities, particularly small municipalities, such as Danforth, Maine, on payment of real estate taxes, and the rights of owners in line of title to rely on what the chain of title suggests require that this Court deny consideration of petitioner's writ.

The decision of the Maine Supreme Court which did not permit petitioner, a career serviceman, to utilize 50 U.S.C. App. § 525 absent a showing of hardship related to his military service was consistent with other state and federal courts, and not inconsistent with this Court's decision in *Le Maistre*.

CONCLUSION

For the reasons set forth in this brief in opposition, the Petition for a Writ of Certiorari should be denied.

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Dated: March 12, 1992

(3)

No. 91-1353

In the Supreme Court of the United States

OCTOBER TERM, 1991

THOMAS F. CONROY, PETITIONER

v.

WALTER S. ANISKOFF, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, excludes a service member's period of military service after October 6, 1942, from the computation of "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The question presented is whether a service member may invoke the protections of Section 525 without showing that his military service prejudiced his ability to redeem his property within the period otherwise prescribed by state law.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATUTORY PROVISION INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided

by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

STATEMENT

1. Petitioner, a Colonel in the United States Army, has been on continuous active duty with the Army since November 26, 1966. During that time, petitioner has been stationed in four foreign countries and several duty stations in the United States. While stationed in Massachusetts in 1973, petitioner purchased real estate in Danforth, Maine. Petitioner paid all local real estate taxes on the property until 1984, but he did not do so in 1984, 1985, or 1986.[2] Although the town sent petitioner tax notices, they were returned as "undeliverable as addressed and unable to forward." Pet. App. 24-28.

By operation of Maine law, a lien against real estate arises to secure the payment of taxes legally assessed against the real estate. Maine Rev. Stat. Ann. tit. 36, § 552 (West 1990). After a specified period, the tax collector may send the taxpayer a notice of lien and a demand for payment. Maine Rev. Stat. Ann. tit. 36, § 942 (West 1990). If taxes remain unpaid after an additional 30 days, the tax collector records a "tax lien certificate" in the county registry of deeds. *Ibid.* Recordation of the certificate creates a tax lien mortgage, and the tax-

[1] On March 18, 1991, Congress amended 50 U.S.C. App. 525 to replace a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present reference to "October 6, 1942." Soldiers' and Sailors' Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. That technical amendment does not affect the question presented in this case. For purposes of convenience, we refer to the present version of Section 525 throughout.

[2] Petitioner testified that he never received tax bills for those years, that he sent the municipality correspondence in 1985 concerning his 1984 and 1985 bills, and that he ceased to pursue the matter when he received no response before he moved overseas the next year. Pet. App. 26-27.

payer has a period of redemption of 18 months before the mortgage is automatically foreclosed after notice to the taxpayer. Maine Rev. Stat. tit. 36, § 943 (West 1990).

Here, the town sent petitioner notices of the tax liens and of the impending foreclosure of those liens, but the notices were returned as undeliverable. Pet. App. 28. After the automatic foreclosure, the town sold petitioner's properties to respondents Walter S. Aniskoff, Jr. and H.C. Haynes, Inc., in December 1986. *Id.* at 27-28. At trial, the parties stipulated:

> [A]ll statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and * * * were it not for the Soldiers' and Sailors' Civil Relief Act, the Town title would have been perfected in this particular instance.

Id. at 28-29.

2. Petitioner brought this quiet title action against the town and the two purchasers in the Maine Superior Court. Noting that 50 U.S.C. App. 525 tolls statutory redemption periods for any "period of military service," petitioner argued that the town did not acquire valid title to his property because he had been in military service throughout the relevant period. The superior court rejected that contention.

The trial court acknowledged decisions holding that under 50 U.S.C. App. 525 any period of military service tolls any period of limitations, and explained that those decisions were based on the principle that a court should apply the plain meaning of a clearly worded statute. Pet. App. 32-33. The court, however, also noted that some courts had concluded that a career service member may invoke Section 525 only if he can show that his military service resulted in hardship excusing timely legal action. Pet. App. 33-34. Those courts, the court observed, had rejected the contrary rule—requiring no showing of hard-

ship by career service members—as "absurd and illogical." *Id.* at 34.

The superior court followed the line of cases requiring a showing of hardship. The court found reading such a requirement into the statute necessary to avoid "absurd, unreasonable or illogical results." Pet. App. 36. If a career officer did not have to demonstrate prejudice, the court reasoned, he could purchase real estate, ignore his tax obligations for a lengthy period, and reclaim the property at the end of his military service. *Id.* at 37-39. Finding that petitioner was a career service member who had not alleged any hardship, the court denied him relief under Section 525. Pet. App. 40.

3. The Maine Supreme Judicial Court affirmed by an evenly divided court. Pet. App. 42-45.

DISCUSSION

The state court's decision requiring a career service member to show hardship before invoking the redemption provision of 50 U.S.C. App. 525 is contrary to the unambiguous and unqualified language of the statute. The state court's analysis, moreover, is inconsistent with this Court's approach to construing Section 525, see *Le Maistre* v. *Leffers*, 333 U.S. 1 (1948), as well as another statute protecting service members, the Veterans' Reemployment Rights Act, see *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570 (1991). Finally, there is a conflict among the circuits and state supreme courts concerning whether Section 525 requires a showing of prejudice. Because Section 525 applies broadly, and the issue is recurring, we believe further review is warranted to resolve the conflict in authority.

1. Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), ch. 888, 54 Stat. 1178, "to provide for, strengthen, and expedite the national defense" and "to enable the United States more successfully to fulfill the requirements of the national defense." 50

U.S.C. App. 510.[3] The Act achieves its objective by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." *Ibid.* Although the immediate rationale for enacting the SSCRA was to address "the emergent conditions which [were] threatening the peace and security of the United States," *ibid.*, and the Act was originally to be of limited duration, § 604, 54 Stat. 1191, Congress later extended its protections indefinitely. Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623.

The provision at issue here, 50 U.S.C. App. 525, tolls periods of limitation and redemption during a service member's military service. The broad and unconditional language of that provision mandates that "[t]he period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service." 50 U.S.C. App. 525. Of specific pertinence here, Section 525 also provides: "[N]or shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." *Ibid.*[4]

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[3] Congress had enacted a substantially similar law in 1918. Soldiers' and Sailors' Civil Relief Act, ch. 20, 40 Stat. 440.

[4] The portion of Section 525 pertaining to redemption periods was enacted in 1942. See Soldiers' and Sailors' Civil Relief Act Amendments of 1942, ch. 581, § 5, 56 Stat. 769-771. In *Ebert* v. *Poston*, 266 U.S. 548, 553 (1925), this Court had determined that an analogous tolling provision in the previous Soldiers' and Sailors Civil Relief Act did not apply to rights of redemption, and Congress amended the 1940 statute to overcome the effect of that interpretation. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 3 (1942).

a. As this Court has often stated, "[i]nterpretation of a statute must begin with the statute's language." *Mallard* v. *United States District Court for the Southern District of Iowa*, 490 U.S. 296, 300 (1989); see, *e.g.*, *Hallstrom* v. *Tillamook County*, 493 U.S. 20, 25 (1989); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). And where "the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917). The plain language of Section 525 requires no showing of prejudice or hardship by a career officer or anyone else. Section 525 flatly excludes "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" for the redemption of real estate. Thus, under the clear terms of Section 525, "[t]he only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service." *Ricard* v. *Birch*, 529 F.2d 214, 217 (4th Cir. 1975); accord *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981).[5]

The SSCRA, moreover, explicitly defines both the type and the duration of military service that qualifies for protection. The category of "person[s] in the military service" encompasses "[a]ll members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy." 50 U.S.C. App. 511(1). And the statute defines "period of military service" to

[5] Although *Bickford* and *Ricard* involved periods of limitation, and not periods of redemption, their reasoning applies with no less force to the part of Section 525 dealing with redemption. Section 525 generally excludes "[t]he period of military service" from any limitations period, but also excludes "any part of such period [of military service] which occurs after October 6, 1942," from periods of redemption.

"mean[], in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force." 50 U.S.C. App. 511(2).[6]

Thus, contrary to the state court's decision, Pet. App. 40, the statute "draws no distinction" among "different categories of active duty personnel." *Bickford*, 656 F.2d at 639. Section 525 on its face applies equally to "*any* person in military service," a category into which Section 511 places "[*a*]*ll* members" of the Armed Forces. Indeed, the statute does not even suggest any criteria for determining who would be a career, rather than noncareer, service member for purposes of Section 525.[7] It is unlikely

[6] Prior to the 1991 amendments to the SSCRA, the statute provided:

> The term "period of military service", as used in this Act [said sections], shall include the time between the following dates: For persons in active service at the date of the approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

50 U.S.C. App. 511(2) (1988). Because petitioner entered active service well after the approval of the SSCRA, the omission of the transitional provisions relating to the 1940 enactment of the SSCRA has no effect on this lawsuit. For simplicity, we refer to the presently effective version of Section 511(2).

[7] Although courts have cited length of service as a factor to consider in determining a service member's "career" status, see, *e.g.*, *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977) (31 years); *King* v. *Zagorski*, 207 So. 2d 61, 62, 64 (Fla. Dist. Ct. App. 1968) (20 years), nothing in the Act indicates how or where a line is to be drawn between career and noncareer members based on their length of service. We do not believe that the *ad hoc* determinations required by a "length of service" test are

that Congress, in enacting so detailed a statute, would have created two classes of tolling rights for service members without specifying any basis for identifying the members of each category. There is, in particular, no basis for assuming that Congress, which traditionally has sought to attract volunteers and to encourage reenlistments (*e.g.*, by payment of reenlistment bonuses), meant to treat either of those categories less favorably than others under Section 525.

Nor is it plausible to suggest that Congress intended to require a showing of prejudice. Not only does Section 525 unconditionally exclude the period of military service from "any period" of redemption,[8] but it stands in marked contrast with other provisions of the Act that expressly condition available relief on prejudice arising from military service. For example, a court may stay "any action or proceeding in any court in which a person in military

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consistent with the plain and unconditional language of Section 525. Nor is it tenable to suggest, as some courts have, see, *e.g.*, *Pannell*, 554 F.2d at 225; *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971), that Section 525's availability turns on the member's status as a conscript, rather than a volunteer. To be sure, the SSCRA was enacted in 1940 to deal with the "emergent conditions which [were] threatening the peace and security of the United States," and Congress contemplated that it would be of limited duration. 50 U.S.C. App. 510; 54 Stat. 1179, 1191. But the language of the SSCRA does not differentiate between conscripts and volunteers. Indeed, in 1940 the Selective Service Act already provided some protection for conscripts, and part of the impetus for enacting the SSCRA was to afford relief to volunteers. S. Rep. No. 2109, 76th Cong., 3d Sess. 1 (1940). And Congress has extended the SSCRA indefinitely, 62 Stat. 623-624, making clear that the Act's protections are fully intended for service members who serve other than in periods of emergency or war. In any case, given the present all-volunteer character of the Armed Forces, a distinction turning on conscription versus voluntary enlistment is meaningless.

[8] See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 245 (10th Cir. 1988) (Section 525's terms are "clear and unambiguous"); *Bickford*, 656 F.2d at 639 (statute's "express terms" make tolling "unconditional"); *Ricard*, 529 F.2d at 217 (tolling statute is "unconditional").

service is involved, either as plaintiff or defendant, * * * unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service." 50 U.S.C. App. 521. A similar qualification appears in many other provisions of the SSCRA relating to diverse forms of civil relief.[9] The absence of any similar

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[9] See 50 U.S.C. App. 520(4) (court may reopen judgment entered against absent service member if "it appears that such person was prejudiced by reason of his military service in making his defense thereto"); 50 U.S.C. App. 523 (court may enter stay of judgment, attachment, or garnishment against service member, "unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service"); 50 U.S.C. App. 526 (limiting interest rate on obligations incurred before entry into military service unless service member's ability to pay "is not materially affected by reason of such service"); 50 U.S.C. App. 530(2) (allowing stay of eviction or distress proceedings against military dependents unless tenant's ability to pay rent "is not materially affected by reason of such military service"); 50 U.S.C. App. 531(3) (allowing stay of eviction or distress proceedings against military dependents "the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service"); 50 U.S.C. App. 532(2) (stay of enforcement of secured obligations, unless "the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(1) (limiting right of assignee of insurance policy to exercise any right or option under the policy, unless "the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(2) (limiting right to foreclose or enforce lien for storage of personal property unless "the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service").

In addition, the National Labor Relations Act establishes a six-month limitations period for filing an unfair labor practice charge, unless the aggrieved person "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." 29 U.S.C. 160(b). That provision confirms that when Congress intends to toll a statute of limitations based on the prejudicial effect

qualification upon the tolling of redemption under Section 525 indicates that Congress did not intend to qualify the availability of that relief. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted).

Other parts of the Act confirm that conclusion. The SSCRA deals directly with the collection of unpaid taxes and assesments on "real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees." 50 U.S.C. App. 560(1).[10] The Act provides that such property may not be sold to collect unpaid taxes or assessments except by leave of court, and that collection proceedings may be stayed until six months after the termination of military service—"unless * * * the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service." 50 U.S.C. App. 560 (2). When such property is sold for back taxes or assess-

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of military service on a service member's ability to bring an action, it does so explicitly.

[10] The state court did not consider, and petitioner does not rely on, that provision in this case. Nor does petitioner suggest that he or his dependents ever used the property in question for "dwelling, professional, business, or agricultural purposes," as required by Section 560. As this Court has noted, however, the fact that property is not within the ambit of Section 560 does not affect the applicability of Section 525. *Le Maistre* v. *Leffers*, 333 U.S. at 5. The two provisions supplement each other; Section 560 provides protections relating to both the forced sale and redemption of the specified kinds of property, whereas Section 525 applies generally to all property but protects only against expiration of the right of redemption. 333 U.S. at 5-6.

ments, however, the SSCRA provides, without qualification, that a service member "shall have the right to reedeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." 50 U.S.C. App. 560(3). Thus, two provisions appearing side-by-side in the same section of the SSCRA differ as to whether prejudice is required; the subsection dealing with collection proceedings requires consideration of prejudice while the adjacent subsection dealing with the right of redemption pointedly omits such a requirement. This is powerful confirmation that Congress intended to make the right of redemption unqualified in the SSCRA.

The inference that Congress purposefully omitted a prejudice requirement from the redemption provision is generally reinforced by the carefully detailed character of the SSCRA's remedial scheme. As this Court observed of a substantially similar version of the SSCRA enacted during World War I:[11]

> This Act is so carefully drawn as to leave little room for conjecture. It deals with a single subject and does so comprehensively, systematically, and in detail. * * * To ensure certainty, separate provision is made for each of the several classes of transactions to be dealt with and for the situations likely to arise in each. * * * Such care and particularity in treatment preclude expansion of the Act in order to include transactions supposed to be within its spirit, but which do not fall within any of its provisions.

Ebert v. *Poston*, 266 U.S. 548, 554 (1925). Although the Court made that observation in rejecting a remedy found nowhere in the statutory text,[12] there is no reason to con-

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[11] "The Act of 1940 was a substantial reenactment of that of 1918." *Boone* v. *Lightner*, 319 U.S. 561, 565 (1943).

[12] The Court declined to toll the state-law redemption period for a service member whose mortgage had been foreclosed prior to the enactment of the SSCRA in 1918.

clude that the "care and particularity" with which the SSCRA is drawn leaves any greater room for implication of restrictions on relief that are nowhere in the text of the statute.

Indeed, there is even less basis for implying nonstatutory restrictions on relief, because the SSCRA must be liberally construed in favor of service members. See *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948). In *Le Maistre* this Court rejected a "technical reading" of Section 525 that would have limited the tolling of periods of redemption to cases in which a purchaser obtained title to forfeited land prior to the period of redemption. 333 U.S. at 4. The Court reasoned that Section 525's language "does not compel the narrow reading that is suggested," and that "the spirit of the amendment [covering redemption periods] repels any such restriction." *Ibid.* The Court added that "the Act must be read with an eye friendly to those who [have] dropped their affairs to answer their country's call." *Id.* at 6. Thus, even if the SSCRA were unclear regarding a requirement of prejudice under Section 525, any ambiguity would have to be resolved in favor of the service member. See *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570, 574 n.9 (1991) (reaffirming "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor").[13]

b. Despite Section 525's plain language, the state court in this case held that a requirement of prejudice for a

[13] The state court in this case suggested that the pertinent canon applies only when an individual is called to temporary service during time of war, see Pet. App. 36, but *King* applied it in the case of a National Guard member who voluntarily assumed a three-year tour of active duty in peace time. 112 S. Ct. at 571-572. Although *King* arose under the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2021 *et seq.*, it articulated the canon in general terms that were not limited to that particular statute. Moreover, the decision upon which *King* relied in applying the canon, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (construing VRRA's predecessor statute), relied in turn upon *Boone* v. *Lightner*, 319 U.S. at 575, a case arising under the SSCRA.

career service member seeking to toll a period of redemption is necessary to avoid absurd results. Pet. App. 36-40. The court relied on several decisions concluding that Congress could not have intended the practical consequences of a contrary rule—namely, that a career service member could sow uncertainty in land titles by not paying real estate taxes, while retaining an unqualified right of redemption, during the entire period of his military service. See *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977); *Bailey* v. *Barranca*, 488 P.2d 725, 729-730 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968). However, that essentially policy-based argument cannot overcome the plain meaning of the statute.

Indeed, the reasoning of *Pannell*, *Bailey*, and *Zagorski* is directly contrary to that of this Court's recent decision in *King* v. *St. Vincent's Hosp.*, *supra*. At issue in that case was a provision of the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2024(d), that requires employers to give reservists "a leave of absence" for training, and assures the returning employee "such seniority, status, pay, and vacation" as he would have had without the absence. The service member in *King* sought a three-year leave of absence, but his employer rejected it. Although the plain language of Section 2024(d) was unqualified in granting a right of leave, the court of appeals read a reasonableness requirement into the statute's guarantee of leave time; to do otherwise, the court held, would cause "absurd, unjust, or unintended" results. *St. Vincent's Hosp.* v. *King*, 901 F.2d 1068, 1071-1072 (11th Cir. 1990).

This Court reversed, reasoning that the language of Section 2024(d) is "unequivocal and unqualified" and "does not address the 'reasonableness' of a reservist's leave request." *King*, 112 S. Ct. at 573 (citations omitted). Although acknowledging the force of the argument that a literal reading of Section 2024(d) would create serious practical difficulties, the Court determined that "to grant

all this is not to find equivocation in the statute's silence, so as to render it susceptible to interpretive choice." 112 S. Ct. at 573. In particular, the Court observed that, unlike Section 2024(d), certain other provisions of the VRRA "expressly limit" the duration of reemployment rights. 112 S. Ct. at 573. In view of "the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions," the Court inferred that "the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." *Id.* at 574. Finally, the Court emphasized that even if there were ambiguity in the statute, it would have to be resolved in favor of the service member "under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Id.* at 574 n.9.

The same analysis applies to the redemption provision of Section 525. The language of that provision is "unequivocal and unambiguous"; it contains no requirement of prejudice; it is surrounded by other sections of the SSCRA that "expressly limit" available civil relief with "affirmative" requirements of prejudice; and it arises in the context of a statute that must be liberally construed in favor of the service member. Whatever policy concerns may arise from an unqualified tolling of the period of redemption during the period of a military service, the courts "must deal with the law as it is." *Monroe* v. *Standard Oil Co.*, 452 U.S. 549, 565 (1981).[14] By adding a requirement of prejudice to Section 525, the state court restruck the statutory balance in a manner inconsistent with the plain language selected by Congress in the SSCRA.[15]

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[14] This is especially so, moreover, under a statute governing the Nation's military affairs. Cf. *Rostker* v. *Goldberg*, 453 U.S. 57, 65-66 (1981) (noting the great deference owed to Congress in matters of national defense and military affairs).

[15] This Court has noted that "[l]egislative history is irrelevant to the interpretation of an unambiguous statute," *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 808-809 n.3 (1989), and we are in any case unaware of anything in the legislative history that would contradict the plain meaning of the statute. To be sure, the legislative history accompanying the 1918 enactment of the SSCRA indicates that "[i]nstead of a rigid suspension of all actions against a soldier, a restriction upon suits is placed only where a court is satisfied that the absence of the defendant in military service has materially impaired his ability to meet that particular obligation." H.R. Rep. No. 181, 65th Cong., 1st Sess. 2 (1917). However, as discussed, where Congress intended to give effect to that principle in the legislation, it did so expressly. Congress did not do so with respect to the tolling provisions. The House sponsor of the 1918 bill, moreover, made clear that the SSCRA would "suspend entirely" the statute of limitations during the service member's period of service. 55 Cong. Rec. 7788 (1917) (Rep. Webb).

It is also true that the legislative history surrounding the SSCRA's 1940 reenactment reflects a primary purpose of addressing the urgent conditions that might arise if individuals were called to serve in the impending war. See, *e.g.*, *Bailey*, 488 P.2d at 728 (discussing legislative history). But "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history," *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 115 (1988); and Congress's indefinite extension of the SSCRA in 1948 leaves no doubt that the statute encompasses more than the protection of service members called to fight in a war. Finally, the legislative history of the 1942 amendment extending Section 525 to periods of redemption contains no suggestion of a prejudice requirement. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942) ("The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period [of military service] which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942) (same).

2. There is a conflict among the circuits and state supreme courts concerning whether a showing of prejudice is required under 50 U.S.C. App. 525. The Fifth Circuit has held that the redemption provision of Section 525 "is inapplicable to a career service man" who "is not shown to have been handicapped by his military service from asserting any claim he had prior to the expiration of the

prescribed period." *Pannell* v. *Continental Can Co.*, 554 F.2d at 225. The New Mexico Supreme Court, moreover, has relied on practical considerations and the legislative history of SSCRA to hold that a "career" service member may not invoke Section 525 to extend a period of redemption, absent a showing of prejudice arising from military service. *Bailey* v. *Barranca*, 488 P.2d at 727-730.[16]

While we are unaware of any decision of a United States Court of Appeals or a state supreme court that has squarely held that a showing of prejudice is not required under the redemption provision of Section 525,[17] *Pannell* and *Bailey* cannot be reconciled with the numerous decisions holding that periods of limitaton may be tolled

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[16] With respect to the portion of Section 525 dealing with the period of limitations, the Alabama Supreme Court has also held that a "career" service member may not invoke Section 525 in a tort suit without a showing that the plaintiff's military service impaired his ability to file the action. *Crouch* v. *United Technologies Corp.*, 533 So. 2d 220, 221-223 (Ala. 1988); see *Smith* v. *Fitch*, 171 P.2d 682, 687-688 (Wash. 1946) (tolling provisions inapplicable because plaintiff "was in no way prejudiced by being in the military service").

[17] *Illinois Nat'l Bank* v. *Gwinn*, 61 N.E.2d 249 (Ill. 1945), applied Section 525 to toll the redemption period for a service member on active duty with the Navy during World War II. In so doing, the court observed:

> [Section 525] is not merely directory or permissive, but is imperatively controlling and automatically extends the period of time allowed for redemption in all cases coming within the application of its terms. It is evident that the provisions of [Section 525] * * *, as amended October 6, 1942, are self-executing, and that it was not the intention of Congress to make it discretionary with the court whether, under the facts of the particular case, an extension of time for redemption should be had.

61 N.E.2d at 254. Although *Gwinn* did not explicitly address the issue decided in *Pannell* and *Bailey*, those decisions would have come out differently under *Gwinn's* interpretation of the redemption provision.

under Section 525 without any showing of prejudice.[18] For example, in *Mason* v. *Texaco Inc.*, 862 F.2d at 244-245, the Tenth Circuit rejected the argument that a career military employee could not invoke Section 525 in a tort action without showing that his service disabled him from bringing suit. The court held that Section 525 is "clear and unambiguous," and that under "the plain meaning of the statute," the only condition upon tolling "is military service." 862 F.2d at 245. In so holding, the court of appeals expressly noted its disagreement with the Fifth Circuit's decision in *Pannell*. *Ibid.*

Similarly, in *Bickford* v. *United States*, 656 F.2d at 639, an action by a service member for back pay and allowances, the former Court of Claims rejected the government's contention that Section 525 requires proof that military service handicapped the service member's ability to bring suit.[19] The *Bickford* court explained:

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[18] The text of Section 525 is certainly no less unconditional with respect to periods of redemption. Section 525 excludes "[t]he period of military service" from any period of limitation, and also excludes "any part of such period [of military service] which occurs after October 6, 1942," from "any period" of redemption. Respondents therefore err in asserting, Br. in Opp. 4-5, that no conflict exists because the cases declining to require prejudice have thus far involved periods of limitation, and not periods of redemption.

[19] The Fourth Circuit, in an unpublished opinion, recently accepted the government's argument that Section 525 cannot be invoked without a showing of prejudice in an action to correct military records under 10 U.S.C. 1552. *Townsend* v. *Secretary of the Air Force*, No. 90-1168 (Nov. 12, 1991) (947 F.2d 942 (Table)). We note that the present case does not present the question whether Section 525 applies when Congress has provided a statute of limitations that explicitly governs the right of a service member or former service member to file suit. Cf. *Mouradian* v. *John Hancock Cos.*, 930 F.2d 972, 973-975 (1st Cir. 1991) (per curiam) (applying the specific military service tolling provision in the NLRA's statute of limitations, 10 U.S.C. 160(b), rather than applying general provisions of Section 525), cert. denied, 112 S. Ct. 1514 (1992). We also note that this case does not raise the issue whether a defense

> There is not ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.

656 F.2d at 639-640. The court expressly noted that it believed *Pannell* was "wrongly decided." *Id.* at 641 n.9. Other courts have also declined to condition relief under Section 525 upon a showing of prejudice. See, *e.g.*, *Ricard* v. *Birch*, 529 F.2d 214, 216-217 (4th Cir. 1975); *Ray* v. *Porter*, 464 F.2d 452, 454-455 (6th Cir. 1972); *Jones* v. *Garrett*, 386 P.2d 194, 200 (Kan. 1963).[20]

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of laches is available even if Section 525 precludes application of the statute of limitations.

We are advised by the Department of Defense that the House Committee on Veterans' Affairs is considering H.R. 4763, a bill "[t]o restate and clarify the Soldiers' and Sailors' Civil Relief Act of 1940." As presently drafted, H.R. 4763 would limit the applicability of the statute's tolling provisions with respect to claims against the United States, and would require, among other things, a showing of "material effect" for that class of claims. The committee has conducted hearings on H.R. 4763, but the bill has not been reported to the House.

[20] *Ricard*, *Ray*, and *Garrett* all involved suits *against* service members—which are also subject to the tolling rules of Section 525. Applying the unqualified terms of the statute, those cases held that a plaintiff may invoke Section 525 without showing that the defendant's military service impaired the plaintiff's ability to sue. See *Ricard*, 529 F.2d at 217 ("The tolling statute is unconditional. The only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service."); *Ray*, 464 F.2d at 456 ("[T]he [SSCRA] means exactly what it says, 'The period of military service shall not be included.'"); *Garrett*, 386 P.2d at 200 ("The

Although the present case resulted in an equal division of the Maine Supreme Court, it warrants further review. There has been a persistent conflict among the circuits and state supreme courts on the proper interpretation of Section 525. See *Oberlin* v. *United States*, 727 F. Supp. 946, 947 n.1 (E.D. Pa. 1989) (discussing conflict); *Syzemore* v. *County of Sacramento*, 55 Cal.App. 3d 517, 522-524 (Ct. App. 1976) (same). Moreover, Section 525 applies broadly to all service members, and the question whether prejudice is required is recurring. Finally, the issue presented, which turns on a straightforward application of the plain language of the SSCRA, has been thoroughly considered in a number of decisions, including the superior court's decision in this case. Thus, particularly in view of the fact that the SSCRA may well be invoked more frequently in the aftermath of Operation Desert Storm, the Court should grant certiorari in this case to resolve the conflict in authority on the requirements of Section 525.

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critical factor which brings section 525 of the act into play is that of military service. When that circumstance is shown, the period of limitation is automatically tolled during the duration of that service.").

For other decisions indicating that Section 525's tolling provisions are unqualified, see, *e.g.*, *Mouradian* v. *John Hancock Cos.*, 930 F.2d at 973 ("The SSCRA * * * tolls the limitations period during a litigant's active military service regardless of whether he or she actually is prevented from filing by reason of his or her service."); *Worlow* v. *Mississippi River Fuel Corp.*, 444 S.W.2d 461, 463-464 (Mo. 1969) ("A showing of prejudice to the person in military service is no part thereof [Section 525]; its provisions are mandatory and require a tolling of the statute of limitations during the period of military service.") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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No. 91-1353

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

JOINT APPENDIX

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TABLE OF CONTENTS

RELEVANT DOCKET ENTRIES

I. District Court for the Northern District of Washington County, Maine

1.	11/30/87	- Complaint filed in *Conroy v. Aniskoff and Town of Danforth*, No. 87-CV-106.
2.	12/4/87	- Defendant Town of Danforth's answer filed.
3.	1/4/88	- Defendant Aniskoff's answer, counter-claim and cross-claim filed.

II. Superior Court for Washington County, Maine

1.	1/8/88	- *Conroy v. Aniskoff and Town of Danforth* (No. 87-CV-106) removed from Fourth District Court-Division of Northern Washington (docketed as No. CV-88-04).
		- Plaintiff's reply to defendant Aniskoff's counter-claim filed (No. CV-88-04).
2.	7/15/88	- Complaint filed in *Conroy v. H.C. Haynes, Inc.*, No. CV-88-78.
3.	7/18/88	- Defendant H.C. Haynes, Inc.'s answer and affirmative defense filed (No. CV-88-78).
4.	10/4/88	- Plaintiff's motion to amend complaint filed (No. CV-88-01).
5.	10/13/88	- Plaintiff's motion to amend complaint filed (No. CV-88-78).
6.	10/18/88	- Defendant H.C. Haynes, Inc.'s answer to amended complaint filed (No. CV-88-78).
7.	10/19/88	- Plaintiff's amended complaint ordered filed (No. CV-88-78).

8. 10/25/88 - Plaintiff's motion to amend complaint and amended complaint filed (No. CV-88-04).
9. 12/30/88 - Plaintiff's motion to consolidate filed.
10. 1/18/89 - Cases consolidated (No. CV-88-04 – CV-88-78).
11. 9/26/90 - Non-jury trial.
12. 11/8/90 - Decision and order filed.

III. Supreme Judicial Court of Maine

1. 12/3/90 - Notice of appeal filed.
2. 12/19/90 - Order of remand filed.

IV. Superior Court for Washington County, Maine

1. 2/14/91 - Stipulation filed.
2. 2/19/91 - Stipulated order and judgment filed pursuant to remand.

V. Supreme Judicial Court of Maine

1. 2/27/91 - Notice of appeal filed.
2. 11/27/91 - Judgment affirmed by equally divided court.

VI. United States Supreme Court

1. 2/20/92 - Petition for a writ of certiorari filed.
2. 6/22/92 - Petition for a writ of certiorari granted.

TRANSCRIPT EXCERPTS
September 26, 1990

[15] THOMAS F. CONROY, called on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Would you state your name, please.

A Thomas F. Conroy.

Q Where do you live, sir?

A Current duty, I'm stationed in Madison, Wisconsin, at 961 Derby Drive, in Sun Prairie, Wisconsin.

Q Where is your home?

A I'm a native of Maine. I was born in Portland, and I was raised in South Portland.

Q You graduated from schools in that area?

A I attended – I said I grew up in South Portland, I attended the local schools, high school, and I attended the University of Connecticut.

Q And from the University of Connecticut you obtained a commission in the Army?

A That's correct, yes.

Q Did you then enter on active duty with the United States Army?

A I did in 1962.

Q Do you recall when in 1962?

A February of 1962.

Q And for how long did you stay on active duty with the [16] United States Army?

A At that – during that period, I remained in active duty until July of 1964, then I voluntarily separated from the

active service, remained out of the Army for approximately two years, two and a half years, and reentered the Army in November of 1966.

Q And since November of 1966, have you been on continuous active duty with the United States Army?

A Yes, I have.

Q And are you still on active duty with the United States Army?

A Yes.

Q Has there been any break in that active duty since November of 1966?

A. No, there has not.

MR. ANDERSON: May I have plaintiff's one, your Honor, please.

BY MR. ANDERSON:

Q I'm going to show you what has already been admitted as plaintiff's exhibit one, and it's been agreed that this is the deed pursuant to which you took title. Would you just take a moment to look at that and tell us if you agree that that is so.

A Yes, it is, yes. This is the warranty deed that I received when my family and I purchased the property in [17] 1973.

MR. ANDERSON: May I have the maps, please, your Honor.

BY MR. ANDERSON:

Q And looking at plaintiff's exhibit number three, which has already been admitted, would you simply hold it up so that his Honor can see, and point to the two lots we're talking about.

A Well, this is a sketch, depiction here of the area of Danforth and the lots that I owned. My name is here on lot six, but it is apprised of lot five and six, essentially, as a total – total area that I purchased (indicating).

Q And that portrays the land which you acquired under plaintiff's exhibit one?

A That's correct, yes.

Q Now, Colonel Conroy, is that correct, you're serving currently in the rank of colonel?

A Yes.

Q When you acquired this property, what was your rank?

A I was a captain.

Q Do you remember if you paid taxes on this property for a period of time?

A I paid taxes on this property for 10 years without problems, yes.

[18]Q And did you move around, change duty stations while you owned this property?

A Yes, for – well, as an example, for the 20 years – we'll say the years that are encompassed by this timeframe, from '73 to '86, I had nine different major reassignments and relocations throughout the United States, Europe, and Far East.

Q And when did you last receive a bill for taxes on this property and pay them?

A Last time I received the bill was at Fort Devens, Massachusetts, which was my last and only address before moving to reassignment to Europe. I was located at Fort Devens on assignment, and my address was 69 Elm Street, that bill I received then was my 1983 tax bill.

Q Where did you go from Fort Devens?

A From Fort Devens we were reassigned to Rome, Italy, where we spend approximately seven, seven and a half months. And then we were reassigned from there to the Netherlands.

Q From the Netherlands you returned to your current assignment?

A From the Netherlands we were reassigned to Madison, Wisconsin.

Q Since you've owned this property, how often have you returned to the State of Maine?

[19]A Since owning the property, it's very difficult to -- to put a definite number on that. We return whenever the situation permitted us to. I can't say that we returned once every three years, whatever, but I would say perhaps as a ballpark figure, we were able to return for perhaps a week, 10 days, or something along those lines, for -- for a week or 10 days. As an example, prior to my shipment to Europe, after leaving Fort Devens, we were in South Portland area for seven days.

Q Now, have you been on this land from time to time since you acquired it?

A Yes, we have. My family and I have -- I have three sons and a daughter, we purchased this land, basically, to use as an entire family retreat. And at some point in time that would allow in my career, perhaps when I retired, to put a little cabin up there, use it as kind of a get away for the entire family. And so during the years, we wanted to spend sometime there, when the situation would permit, we did that on at least three, perhaps four occasions where we camped out on the land as a family.

Q Do you recall when the last such occasion occurred?

A I think that was -- I think it was in the '80, '81 timeframe.

Q As this case has developed, you engaged, through me, a [20] forester, did you not, as an expert, Mr. Putnam?

A Yes.

Q Mr. Putnam?

A Yes.

Q And have you paid Mr. Putnam's fees?

A Yes, I have.

Q And you have paid my fees throughout the course of this litigation?

A Yes, I have.

Q And neither Mr. Putnam nor I represent you in any other matters; is that correct?

A That's correct.

MR. ANDERSON: I have no further questions.

THE COURT: Mr. Sylvester for the town.

CROSS-EXAMINATION

BY MR. SYLVESTER:

Q Colonel, you're a Maine native?

A Yes, I am.

Q And you're aware of the requirement to pay taxes when they are assessed?

A Most definitely. I own a home in South Portland and I pay taxes on that home for the years that I have owned it, since 1964.

Q So you still own that home in South Portland?

A We have a home in South Portland, yes.

[21]Q And you did for at least 10 years during your active duty service receive the tax bills and the mailings from the Town of Danforth; is that correct?

A That's correct, we received those at the various stations where we were assigned.

Q And they would come in some sort of an envelope like that, (indicating), tax collector, Town of Danforth?

MR. ANDERSON: Your, Honor, I object to this line of questioning. I'm not sure that that is at all relevant. The particular section of the Soldier and Sailor Civil Relief Act that we're operating under makes no reference to notices, its protection is absolute.

THE COURT: You may be very well correct, Mr. Anderson. There is no jury here, I'm going to allow it and I will make a ruling, obviously, before concluding what the ultimate disposition in this matter is, whether or not the Act applies, that seems to be the issue, if it applies, and I agree it's not relevant, if it doesn't apply, then it is relevant, and I will allow it. All right.

MR. SYLVESTER: Thank you, your Honor.

BY MR. SYLVESTER:

Q So on a regular basis you were receiving tax notices from the Town of Danforth while you were on active duty; is that true?

[22]A For 10 years we received –

2Q For 10 years. And during each of those years, when you got the notice from the town, you promptly and correctly paid your taxes?

A Yes, no question.

Q No question about that?

A No.

Q All of a sudden in 1983 – you were in Fort Devens, Mass.; is that true?

A That's correct, yes.

Q And I believe you just testified that you did get your '83 notice before you relocated to Europe?

A That's correct.

Q Did you pay your '83 taxes?

A Yes.

Q Are you – do you have proof of that, sir?

A Do I have proof of payment?

Q That you paid the '83 taxes?

A Yes, I'm quite sure I do, in my records I have them –

* * *

[23]

* * *

Q When you get an opportunity, possibly you could just provide us with that. You were aware of the requirement, were you not, Colonel, to notify a taxing authority, such as the town, of your change of address?

MR. ANDERSON: Excuse me, Mr. Sylvester, before he answers that, I am pleased to provide you with that document now, if you like.

MR. SYLVESTER: Thank you.

Q You were aware –

A Can I jump back to that '83 tax –

Q Yes, please.

A I did pay those '83 taxes, and I did pay them from my last known address in the United States, which was at 69 Elm Street, Fort Devens, Massachusetts. You can see by the check there, my address is stenciled on that check –

Q Yes, sir.

A – as the then current address. I want to make sure that that's understood, but we did make that payment [24] from my last known address in the States.

Q Fine. And when were you relocated to Europe, sir?

A We relocated to Europe in I'll say December of '85, January of '86. We actually made the move, we cleared the installation at Fort Devens during the last month of 1985.

Q Yes, sir. Other than the property in South Portland and the property in Danforth, did you own any other real estate in the State of Maine?

A No, we –

Q Again –

A Not in the State of Maine, no, we have our home out here in Wisconsin, of course, we pay taxes –

Q I'm referring to the State of Maine, and again I apologize if I didn't clear that up on the timeframe, that would be like between '83 and '86. So during that timeframe, you owned only two parcels in the State of Maine?

A Yes.

Q Fine. And you were aware of your requirement to pay the taxes on both of those parcels?

A No question, yes.

Q And I presume that the parcels in Danforth, as you have just testified, was fairly important to you and your family as a retreat?

[25]A Yes.

Q And you were aware that if you didn't pay your taxes for a period of time that the town, if it wished, if it so chose, any town, could initiate proceedings to take the property for the nonpayment of taxes?

A Well, I wouldn't admit to saying that I was aware of that, you know, I – I certainly was aware of some of the problems that will ensue if someone doesn't pay the taxes, but did I perceive that Danforth would take this property and sell it under the circumstances that then prevailed, absolutely not. It was inconceivable to me what occurred did actually occur.

Q Did you keep good records like with your checkbooks and your own personal items, Colonel?

A I think so.

Q And when you didn't receive the tax bills on this very important parcel of land in Danforth, did that not trigger in your mind something, like, gee, I should be paying my taxes this year?

A There is no question, yes, it did trigger in my mind that I should be paying taxes, but, you know, and we had done everything, or I had done everything and operated under standard procedure of notifying Danforth of our whereabouts. There are certain things a military

serviceman or woman must do as standard [26] procedure when they receive official notice for relocation. I, of course, have to counsel my men on doing that, so I certainly do it myself. And we – those procedures are basically to make our change of address in your unit of assignment with your postal clerk, to go to the local servicing postal facility, be it either on the installation or the local community, put – submit a change of address card there as well, and thirdly and lastly is to inform all of those folks that you do business with, periodicals or correspondence of any kind, you send them a change – basically a change of address. Now, did I do those things, yes, there is no question that I did those things. And I have done those things ever since we were in the military. And I can only say that a service person cannot survive – cannot conduct a daily business of life without doing those things because of the constant relocations and reassignments.

A I understand that, Colonel, thank you. Now, when you did relocate, you say – your testimony is that you believe that you sent out a change of address card to the Town of Danforth. Let me ask you this, when you didn't receive your tax bills for three years in a row, did you write or call, by a letter, not just a change of address card, the Town of Danforth to say this land [27] that I prize so dearly, I have not received a tax bill on, nor have I paid taxes in three years; did you do that?

A Yes, we sent notice to Danforth, but again, I have to go back to 1983 and look at this thing as – in total context. 1983 I last paid my taxes, I was at my last known address, then, in the United States. That was at Fort Devens. I paid those taxes at that time. Of course, I moved from my previous address, which was West Dover Air Force Base, the previous year, and that's where Danforth continued to send, apparently, all of these letters on notification, or registered mail, and so forth, which is absolutely puzzling to me because they

received my change of address, I had not received it back as not being able to be delivered. And again, I, of course, I paid my taxes in '83, from -- from Fort Devens.

Q I understand that, Colonel --

A So when we did not receive a tax bill in '84, this was -- we had to go another year now, '83 I paid, then I went to '84, summer or fall of '84. I have to say that for a good part of that year I was out of the United States, I was in Beirut, Lebanon, and I was spending most of my time then there, but I do recall returning from Beirut in the fall of '84 and asking the [28] wife -- we had talked about this here as part of my coming to trial, to go over this to be sure we were correct, if she had received the bill from Danforth, and I was puzzled why we hadn't received a bill.

Q Let me just interrupt you, if I may, please, Colonel, at this point --

A Yes.

Q Which is apparently crucial, did you then write a letter to the Town of Danforth saying where is my tax bill?

A As I just mentioned, this was in the fall of '84, I jotted off a note to Danforth, my recollection, early '85, something along the lines saying look, I haven't received my tax bill, would you please send it for '84.

Q Do you have a copy of that letter?

A I do not have a copy of that letter. Simply a very, very inconspicuous note.

Q Do you have any copies of any letters that you may have written to Danforth, other than a note you say that you may have jotted off, asking them for a tax bill or telling them you hadn't received one or paid any?

A No, I don't think so. Other than my -- my final response letter to Danforth, when I received notice from them that

they had taken my property and sold it. [29] This was when I was in Holland.

Q You apparently received that notice?

A I beg your pardon?

Q You received that notice?

A I received a reply to that final letter, but it was after the property had already been sold. That was puzzling to me.

Q Now, what is the time that it takes mail on average to get, using an Army post office, or APO address, from the States, mailed through APO, New York to wherever you were in Europe -- to you in Europe?

A It varied, it went from seven to 10 days.

Q Seven to 10 days. So it wasn't -- isn't months or weeks, we're just talking a few -- very few days; aren't we, Colonel?

A Yes.

Q You had no structure on that property, nothing was built on the property that you had purchased?

A No, we had not put anything on that property.

Q And again, I'm referring to '83 to '86 timeframe.

A I'm sorry, what timeframe?

Q '83 to '86, there was no structure there?

A No.

Q Are you aware that the only letter that the town received from you regarding these taxes prior to the [30] sale was sometime in late '86?

MR. ANDERSON: I object to that, your Honor, there is no --

THE COURT: If he knows.

BY MR. SYLVESTER:

Q If you know, even though --

THE COURT: Do you have personal knowledge?

A Would you repeat that question, please?

Q Did you respond -- you responded to a letter that you received from the town, and that was approximately either late '86 or early '87?

A That was in '87.

Q That was when you responded?

A That was when the town -- the then town manager provided me with a letter indicating that they had taken my property for tax delinquency and sold it. That's the letter that I received.

Q So we have a three-year period that you -- you neither received a tax bill nor paid taxes, and I believe that would be '84, '85, and '86, if you are correct that you did pay the '83 taxes?

A Yes.

Q Colonel, did you write the original letter in this exchange of correspondence in January '87 to the town and they replied to you; is that the way it went?

[31]A I think perhaps that was the way it was, yes.

MR. SYLVESTER: Thank you, nothing further.

MR. ANDERSON: Your Honor, I wish to renew my objection by moving to strike all testimony pertaining to notification to the Town of Danforth or correspondence between plaintiff and Town of Danforth.

THE COURT: Again, the Court is going to allow the evidence de bene, and obviously, the ultimate ruling by the Court may exclude it, all right, as being not relevant.

On behalf of H.C. Haynes, Mr. Cuddy.

MR. CUDDY: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. CUDDY:

Q Colonel Conroy, as I understood your discussions with Mr. Anderson, you and your family acquired this property, and were basically holding onto it during the period between 1983 and '86; that is, you weren't doing anything with it?

A Well, we acquired it in 1973.

Q Right, but the period that we're concerned with -- that I'm concerned with is between 1983 and '86--

A Yes.

Q -- and at that time you were just basically holding onto it; is that correct?

[32]A Yes, that's correct.

Q You had no dwelling place on the property?

A Our intention, of course, at some point in time was to put up a log cabin there or something. We never had the opportunity of doing that, so we didn't have a permanent dwelling on that property.

Q At that time, there was no dwelling on the property; is that correct?

A Yes, it's correct.

Q And is it also correct you weren't using that property for any kind of professional or business purpose?

A No, we --

Q At that time?

A No, we weren't using it for any kind of professional -- as I indicated, we simply used it for recreational use and that was our main objective.

Q You weren't using it for any kind of agricultural purposes, were you?

A No, I had not used it for any kind of agricultural purposes.

Q Your status is still that of an Army officer, sir?

A Yes, that's true.

Q You're a career officer, as such?

A Yes.

Q And that was your status as well during this period of [33] time from '83 to '86?

A Yes.

MR. CUDDY: I have no further questions.

THE COURT: Mr. Mitchell for Mr. Aniskoff.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q You have already testified, it is my understanding, that you reenlisted in 1966, you had been in the service in '62?

A Well, reenlisted officer, but essentially what you're saying is correct, I reentered the service as a commissioned officer in 1966, November, after I – about two and a half year period as a civilian.

Q Okay. You weren't drafted?

A No.

Q In '66 you were a volunteer. An in '66, '67, you – '67 you were in Vietnam, I understand?

A '67, '68 in Vietnam, yes.

Q '68, nine, '70, '71, you were in Georgia and Massachusetts, that's when you purchased the property?

A That's correct, we were then assigned in 1973, when I purchased the property, we were assigned to Massachusetts at Fort Devens, yes.

Q You received tax bills the year after that?

A Yes.

[34]A And '74 would be the same?

A '75, '76 – '74, '75, we were reassigned from Fort Devens to Fort Levinworth, Kansas, in '75 we were – received our bills. They responded to the change of address notices that I gave them during that period, and I received my bills.

Q You paid them?

A As normal.

Q And paid the taxes?

A Yes, and I paid taxes during that time.

Q '76, '77 you were in Korea?

A '76, '77 I was in the Republic of Korea.

Q You received bills and paid them?

A In '76 and '77 there was some question about the bill, for that period of time, and I then inquired of the town regarding that bill, but I have to say that that was another incident that I did not receive a reply from the town

Q You paid your taxes, you didn't lose –

A I wanted confirmation, I was in the Republic of Korea, I asked my wife upon my return had she paid the taxes to South Portland and Danforth, and she thought that she had, but after – I have to explain this. We – our records, our financial records were for various reasons I can't really go into located in South Portland. And [35] at that time we were back at Fort Devens when I asked this question to my wife. She could not be certain of whether we paid those, or she paid those taxes.

Q You did ask her the question, however?

A Yes. And I think I – to my knowledge, I got off a note to Danforth at that time, wanted – asking for confirmation that those taxes were paid for that one year. And I did not receive a reply from Danforth then.

Q And you didn't hear anymore from them so –

A No, I assumed it wasn't a problem, so I just continued to pay my taxes and respond to my bills when I received them each year thereafter.

Q But in that year, you say there was some question so you asked your wife if you – if those taxes had been paid?

A Yes, she – after – I had to ask the wife, that's standard when I'm out of the country, I don't –

Q I don't know what your wife knew, you asked your – you yourself asked your wife if the taxes were paid?

A Yes, I did.

MR. ANDERSON: Your Honor, I object to this line of questioning as being irrelevant.

THE COURT: It's already been testified –

Q THE WITNESS: I have to –

THE COURT: Just a moment, sir, again, we're all talking together. For the record, the question has been [36] previously asked, it's cross- examination, and I'm going to allow it, so why don't you restate the question so there is no mixup on the record.

BY MR. MITCHELL:

Q You didn't lose your property in 1976 to the Town of Danforth or Portland for nonpayment of taxes?

A Not to the Town of Danforth, no, I didn't.

Q And '77, '78, '79, you received more bills?

A That's true, yes.

Q Did you pay your taxes in Portland, I believe you testified yes in '83, '84 and '85?

A In South Portland?

Q South Portland?

A Yes.

MR. MITCHELL: I have no further questions.

THE COURT: Mr. Anderson, any redirect?

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Colonel Conroy, I'm going to show you what's been marked plaintiff's exhibit eight; do you recognize that?

A Yes, this is the check that was used at – a copy of the check that was used when I paid the taxes in 1983 from Fort Devens, Massachusetts.

Q And is that a copy of the check that Mr. Sylvester asked you to prove when he was crossing you?

[37]A Yes.

Q To produce, rather?

A Yes, it is.

MR. ANDERSON: Would offer plaintiff's eight, your Honor.

MR. SYLVESTER: No objection.

THE COURT: Mr. Cuddy?

MR. CUDDY: No objection.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No objection.

THE COURT: It's admitted.

MR. ANDERSON: Nothing further.

THE COURT: All right. No recross by any of the parties? You may step down, thank you, sir.

(At this time, the witness stepped down from the witness stand.)

* * *

[59]

HERBERT C. HAYNES, called on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

[60] DIRECTION EXAMINATION

BY MR. ANDERSON:

Q Would you state your name? Would you state your name, please, sir?

A Herbert C. Haynes.

Q And Mr. Haynes, what is your capacity with H.C. Haynes Incorporated?

A President of H.C. Haynes Incorporated.

Q And how long have you been in that capacity?

A Since 1963.

Q And Mr. Haynes, you're aware that today we're talking about a parcel of land in the Town of Danforth which H.C. Haynes Incorporated acquired from the Town of Danforth in late 1986; are you not?

A Right.

Q And you understood that to be tax acquired property which H.C. Haynes Incorporated was buying?

A Yes, I did.

Q Now, when did you first become aware that a man named Thomas Conroy had some interest in that land?

A When I received the letter in April.

THE COURT: Which April, April of '87, '88?

THE WITNESS: April of '87.

MR. EUGENE PUTNAM: Excuse me, this exhibit –

THE COURT: Just a moment. He will go over and talk [61] to you, because you're talking, she has to write it down. I don't want her to do that. All right.

(Pause.)

BY MR. ANDERSON:

Q Did you have an opportunity to finish your answer, sir?

A Yes.

Q There was a little confusion there. And you say that so far as you knew in April of 1987, you understood there was no problem with H.C. Haynes' claim to that land?

A Well, I contacted my lawyer, James Carr, and he wrote me one or two letters in reference to the land.

Q And the first letter you received from Mr. Carr, I believe, is what has been marked plaintiff's exhibit five, which I am handing to you; is that correct?

A Right.

Q Now, in plaintiff's exhibit five, Mr. Carr indicates to you that an individual who he refers to as the recent owner still has some right, that there is still some defect in the title of that land; does he not?

A Right.

Q And I'm now going to hand you plaintiff's exhibit six, and I believe you have identified that as a letter you received in April, which puts you on notice as to the name of that particular individual as Thomas Conroy?

[62]A Correct.

Q And as a result of the receipt of plaintiff's exhibit six, what did you do?

A I got in touch with Mr. Carr, sent him a copy of that letter, I think.

Q And did you then receive back from Mr. Carr plaintiff's exhibit seven, offering you further advice on that property?

A Right. Yes, I did.

Q And in plaintiff's exhibit seven, Mr. Carr emphasized his earlier statement in December of '86, that that previous owner of the land, a man named Thomas Conroy, had a claim to it; did he not?

A That's what the letter said.

Q Now, did you obtain permission from Mr. Conroy to do any cutting on that land?

A No, I did not.

Q And that was true at any time, correct?

A That's right.

Q And when I say you, I'm talking about you in your capacity as president of H.C. Haynes.

A That is right.

Q To your knowledge, did H.C. Haynes Incorporated receive permission in anyway from Mr. Conroy to cut on that land?

[63]A Not to my knowledge.

Q And H.C. Haynes Incorporated still claims ownership to that land; does it not?

A That is right.

Q Did you make any effort to get in touch with Mr. Conroy?

A No, I did not.

Q What did you do concerning -- when I say you, I'm talking about H.C. Haynes Incorporated, concerning this particular piece of property?

A I got in touch with Mr. Carr.

Q Did you at some point enter on the land through H.C. Haynes Incorporated and commence timber cutting operations?

A Yes, that very -- after we received a deed from the town.

Q And you continued to carry on those timber cutting operations despite knowledge that a man named Conroy was asserting a claim to that land and objected to your cutting; did you not?

A I continued to cut the property until I got the wood all cut.

Q When was the last wood cut on that particular piece of property?

A Sometime in June or July of '87.

Q Now, did you make the decision that H.C. Haynes [64] Incorporated should go out and do this cutting on this particular piece of lot -- particular piece of land, rather?

A I don't -- you mean did I make the decision that we were going to cut?

Q Yes.

A I, along with the people that work for me at my company.

Q Well, this was not an accidental cutting, this was an intentional act of going onto this land and cutting this wood; was it not?

A No, when you have a deed to a piece of property, you feel you can treat it as your own.

Q So the answer is yes?

A That's right.

Q It was intentionally cut. Did you actually go on that piece of land while the wood was being cut?

A No, I did not.

Q Did you at any point inspect the work that was being done?

A You mean in the woods?

Q Yes.

A No, I did not.

Q And throughout the time that the cutting was being conducted by H.C. Haynes Incorporated, you as the [65] president of the corporation were aware that the cutting was going on?

A Yes, I was not on the land, but one of my foresters should have been on the land.

Q And do you know when the wood was first removed from the land?

A I think that the slips say around the middle of May of 1987.

Q You heard Mr. Putnam testify that the first wood in his opinion was carried away from that land on May 17th, 1987?

A Right.

Q Do you agree with that?

A I would agree with that.

Q And that was after you were put on notice that Thomas Conroy was asserting title to that land and objected to the cutting of timber on it; was it not?

A I understand that.

Q And do you agree with Mr. Putnam's valuation of the values of the wood that was harvested on that land?

A Yes, I do.

Q And that was – those records which your company gave to Mr. Putnam were accurate representations of that harvest; were they not?

A That is right.

[66] Q How long have you been in the lumber business, timber harvesting business?

A Oh, probably around 40 years.

Q So that would take us back to 1950?

A Yes.

Q And during that period of time, you have through your company or personally acquired many parcels of land; have you not?

MR. CUDDY: I'm going to object to the relevancy of this.

THE COURT: I assume he's using it for background. Again, I don't see the relevancy. You're laying a foundation for something, give me an offer.

MR. ANDERSON: Yes, I'm laying the foundation for something, if I may be permitted.

THE COURT: All right, proceed. And press your objection at the appropriate time.

BY MR. ANDERSON:

Q You acquired many parcels of land during that 40 years; have you not?

A I have acquired some parcels of land during the 40 years.

Q How many acres does H.C. Haynes Incorporated own; if you know?

A I do not know.

[67] MR. CUDDY: I'm pressing my objection.

THE COURT: His answer is no. Again, I don't see the relevancy. I'm allowing it for background, as something I'm assuming you're going to connect to something.

BY MR ANDERSON:

Q Do you understand the various kinds of deed by which property is transferred in Maine?

A Yes, I do.

Q What's your understanding of the types of deeds?

A Well, warranty deed is person you get it from warranties that the title is good.

THE COURT: Well, just a moment. He's pressing his objection, you can ask him if he knows there are different kinds of deeds. What a warranty deed and quit claim deed is, that's a matter of law, and –

MR. ANDERSON: My point is, your Honor, what I'm leading up to, this is a man who is sophisticated in the acquisition of real estate. He has testified previously at his deposition that he had never, despite many acquisitions, and despite his understanding, had a situation arise in which the Soldiers and Sailors Civil Relief Act was brought to his attention. And despite his sophistication and despite the uniqueness of this situation, he continued to harvest timber through his [68] company

on that land, and well after notification, caused all of that timber to be carried away.

MR. CUDDY: I think that's a matter of argument. For foundation questions, that have already been asked, I don't see what further inquiry on this line is relevant.

THE COURT: I think basically what you're suggesting Mr. Anderson, is that you intend to ask him the question if he knew the effect of the Soldiers and Sailors Relief Act –

MR. ANDERSON: No.

MR. CUDDY: I have no objection to that question.

MR. ANDERSON: No, I don't intend to ask him that question. If it is not true that this was the first time that had been brought to his attention, and that was a unique circumstance, which should have –

THE COURT: Why don't you ask him that question, and I'm sure Mr. Cuddy has no objection, as I understand it, if this is the first time he came in contact with the Soldiers and Sailors Relief Act in reference to title to land; is that your question?

MR. ANDERSON: It is.

THE COURT: All right, ask him. Did you understand what I just said?

THE WITNESS: Yes, I did.

[69]BY MR. ANDERSON:

Q Is that true?

A Yes, it is.

Q And despite that fact, you saw nothing unusual about this transaction?

A No.

Q You were not familiar with that Act, were you?

A No.

Q So would it be fair to say, Mr. Haynes, that despite Mr. Carr's warning that the previous owner had rights in this land, and despite the notice that was given to your company, which you were personally aware of, and despite Mr. Carr's subsequent advice identifying the person who had that claim, you still went ahead and caused this cutting and harvesting and carrying away of the timber to go on; is that fair?

A I would say so, yes.

MR. ANDERSON: Nothing further.

THE COURT: I'm assuming, just to keep the order, you have no questions, Mr. Sylvester?

MR. SYLVESTER: None, your Honor.

MR. MITCHELL: None, your Honor.

MR. CUDDY: I do.

CROSS-EXAMINATION

BY MR. CUDDY:

[70]Q Mr. Haynes, if you would look at plaintiff's exhibit number five, '86 letter, I believe, is that the 1986 letter from Mr. Carr to you?

A Yes, December 18th.

Q Now, perhaps I was mistaken or maybe Mr. Anderson is mistaken, but when you read the first paragraph of that letter back in 1986, did you in any way understand that the prior owner to this land, that is, the owner before the Town of Danforth, was in the military?

MR. ANDERSON: Objection, your Honor, that's leading.

THE COURT: It is leading, but it's – I don't know, in view of what's happened up to here, he can answer. I'm going to allow him to answer.

MR. CUDDY: And if I may, you Honor, I think my status right now is of crossing a gentleman that he called.

THE COURT: That isn't your status, he has a right to call your client and he can cross-examine your client. My understanding of civil, you're not allowed -- this is not a cross-examination, this is direct examination, but I'm going to allow the question in any event. But you should -- this is direct and not cross, all right. It's your client.

MR. CUDDY: I understand who it is, your Honor. I [71] do not agree, but I understand the Court's ruling.

BY MR. CUDDY:

Q In any event, Mr. Haynes, my question to you is, when you got this letter in 1986, did you understand from reading that first paragraph that the owner prior to the Town of Danforth was in the military?

A No.

Q As a matter of fact, did you understand before you got Mr. Anderson's letter in April of 1987 that the prior owner who claims some kind of interest in this land was in the military?

A No, I did not know that.

Q Do I understand you correctly that H.C. Haynes was cutting wood on this lot in the winter of 1986 and then into the spring of '87?

A I'm not sure about cutting in December of '86, but I know we started cutting in January or February of '87 and continued on cutting through the spring of '87 until we had it finished up in the early part of the summer.

* * *

[94]

* * *

WALTER ANISKOFF JR., called on behalf of defendant Aniskoff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Now that you have been sworn, would you state your name once again for the record.

A Walter Aniskoff Junior.

Q And where do you live, Mr. Aniskoff?

A 422 Poquonock, P-O-Q-U-O-N-O-C-K , Avenue, Windsor, Connecticut.

Q You're the owner of a piece of land in Danforth that we're discussing here in this case?

A Yes.

Q And you bought that under deed from the Town of Danforth on December the 22nd, 1986?

A Yes.

Q Well, the deed -- is that accurate?

A It was in December of '86.

Q Now, and what did you pay for that, by the way?

A 5500 and one dollar.

Q 5500 and one dollar?

A Yes.

Q And you gave a check to the town and you got a deed in [95] return?

A Yes.

Q Now, did you have any notice from anybody, the town or any source whatsoever, that there was any problem with that lot of land that you bought in December of 1986?

A No, I did not.

Q Had you ever heard of anybody named Thomas Conroy who was in the Armed Services who -- or anything of that nature prior to your buying that lot of land?

A No.

Q Now, you have paid taxes on this lot of land since your purchase of it in 1986?

A Yes.

Q And how much are those taxes?

A They run about – they started running about $40 and are up to $50 now.

Q Okay. $45 per year?

A Yes.

Q And you have paid those and they are current?

A Yes.

Q You used the property or are in possession of it as we speak until some further order of the Court, you own it and treat it as your own right now, and have since 1986?

A Yes, I have.

[96] MR. MITCHELL: I have no further questions.

MR. SYLVESTER: No questions, your Honor.

MR. CUDDY: Just one question.

CROSS-EXAMINATION

BY MR. CUDDY:

Q I'm not sure if I heard you correctly, your current taxes on the lot in question are $50 a year?

A They run – they started running $40, and it's up to $50 right now.

MR. CUDDY: I have nothing further, thank you.

* * *

[100]

* * *

HERBERT C. HAYNES, recalled on behalf of plaintiff in rebuttal, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Now, Mr. Haynes, without going into the formalities of identifying it, you know the lot we're talking about when we're talking about the lot on which we're having this fight, right?

A Um-hum.

Q Did you regard that lot as the Conroy or as the H.C. Haynes lot in Danforth?

A The Conroy lot, you're asking me?

Q Did you label it the Conroy lot?

A We would be labeling at the office probably as the Conroy lot with it going through H.C. Haynes Incorporated. See, there is a gate ticket system that goes with these lots that accompanies these slips, and that's what identifies –

Q So –

A – the lots.

Q So even thought you thought Conroy had no interest in it, your records would call it the Conroy lot?

[101]A The Conroy lot would have the gate ticket system – the gate ticket that belongs for it was the Conroy lot.

MR. ANDERSON: Nothing further.

THE COURT: Any of counsel for the other parties?

MR. CUDDY: No, your Honor.

MR. MITCHELL: No questions.

MR. SYLVESTER: No, your Honor.

* * *

THOMAS F. CONROY, recalled on behalf of defendant Haynes in rebuttal, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CUDDY:

Q Mr. Conroy, you were present when Mr. Aniskoff testified?

A That's correct, yes.

Q And you -- and thinking back to your testimony, my [102] memory is that you got tax bills at least through 1983 from Danforth; is that correct?

A Yes.

Q And how much were you paying for taxes back at that time?

A It was approximately on both lots, north and south side of the Old Springfield Road, approximately $140, I think, in that neighborhood.

Q For both lots?

A For both lots.

Q What was your rank back then?

A At what time?

Q '83.

A In '83, I was a major.

Q What was your pay back then in '83?

A I'm sorry, I was a lieutenant colonel in '83.

Q What was your pay back then as a lieutenant colonel?

A I don't know exactly.

Q I'm interested in approximately, sir, I don't expect you to have a precise --

A In '83, my base pay perhaps was somewhere around $3000.

Q Your base pay was $3000?

A Um-hmm.

Q Did you have any trouble paying this $140 bill -- let me put it another -- there wasn't any difficulty or any [103] problem for you financially to pay this bill, was there?

A Well, it wasn't a problem to pay that bill, it wasn't a problem to pay any, it was, you know, it's always a problem to pay bills, I don't want you to infer it isn't for anybody. Everybody has bills, and I'm not unique in that regard. But I paid my bills and that bill was included among all of them.

Q You're not claiming that you're unable to pay that bill, sir?

A Not at all, no.

MR. CUDDY: Nothing further.

MR. SYLVESTER: No questions.

James D. Carr
Attorney at Law
Box 301
Houlton, Maine 04730

207-532-9506

December 18, 1986

Herbert C. Haynes
P.O. Box 96
Winn, Maine 04495

Re: Tax Map 6, Lots 5 & 6
(97 acres, Town of Danforth)

Dear Herb:

The title on the above captioned property you acquired from the town is clear as appears of record except for the most recent owner's right to challenge the tax acquired title. In order to clear that defect you would need a Release Deed from him or a Judgment quieting his title.

I also note that your deed from the town does not yet appear of record. Finally, I would mention that there never has been a very good legal description of the property; even the earliest deeds simply refer to the neighbors who occupy the neighboring land. Unless you want to rely upon the tax map, you might want to have a surveyor provide a more precise description at some point.

Very truly yours,

/s/Jim_____
James D. Carr

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 5

JDC/bg

April 23, 1987

H.C. Haynes, Inc.
Winn, Maine 04495

Gentlemen:

This firm represents COL Thomas Conroy concerning real estate owned by him in Danforth, Maine. I notice from the records in the Washington County Registry of Deeds that you received a Municipal Quitclaim Deed to a portion of this property from the town. A copy of that deed is enclosed.

The Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx. § 525 indicates that the period of service of a military person is not to be counted in calculating the time within which property can be redeemed from a tax taking. Since COL Conroy is still on active duty in the military, he is entitled to redeem the property. Title has not matured in the Town of Danforth and cannot mature during his service.

My purpose in contacting you is twofold. First, I urge you, or your legal representative, to contact me in order to discuss this problem. Second, if you are contemplating cutting, or are in the process of cutting, any timber on this property, I wish to place you on notice that this cutting is without the permission of the true owner of the property, Thomas Conroy.

Yours truly,

/s/ Peter A. Anderson
Peter A. Anderson

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 6

PAA/jac
Enc.
bcc: Joseph Conroy

May 7, 1987

Herbert C. Haynes
P.O. Box 96
Winn, Maine 04495

Re: Tax Map 6 - Lot 5 & 6
Danforth

Dear Herb:

The Soliders and Sailors Relief Act provides that while serving in the armed forces the period of redemption for lands taken under the tax lien process is extended and the town may not sell the property without obtaining permission of the court.

The sale by the town to you is not void, but Col. Conroy has the right to redeem the property. Until that happens, you hold it under a color of title and can treat is as your own.

Even if Conroy had not been in the army you would have needed a release deed from him to obtain certifiable title since it was a tax tile the town conveyed to you.

You can let me know if you want to make an offer to Col. Conroy to obtain his interest which would then clear the title. If he redeems the property, you could proceed against the town to recover your purchase money.

Your truly yours,

James D. Carr

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 7

JDC/bg

STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-88-04-
CV-88-78

THOMAS F. CONROY,
Plaintiff
v.
WALTER ANISKOFF, JR., and THE INHABITANTS OF THE TOWN OF DANFORTH,
Defendants
and
THOMAS F. CONROY,
Plaintiff
v.
H.C. HAYNES, INC.
Defendant

STIPULATION

The parties, through their undersigned counsel, hereby stipulate and agree that the following "Amended" Judgment may be entered, subject to the approval of Justice Beaulieu:

"JUDGMENT: Consistent with the Order of Remand of the Supreme Judicial Court in this matter dated December 10, 1990, the Court hereby enters the following Amended Judgment: These matters having been heard without jury, the Court finds in favor of the Defendants in the matters CV-88-04 and CV-88-78 and enters judgment in favor of the Defendants and against the Plaintiff in each case. All pending cross-claims and counterclaims are hereby dismissed as are the Plaintiff's Complaints in each of the above-captioned actions."

Dated: 2/13/91

/s/ Peter A. Anderson
Peter A. Anderson, Esq.
202 Exchange Street, Suite 200

Bangor, Maine 04401
Counsel for Thomas Conroy

Dated: 1/31/91

/s/ Kevin M. Cuddy
Kevin M. Cuddy, Esq.
CUDDY & LANHAM
470 Evergreen Woods
Bangor, Maine 04401
Counsel for H.C. Haynes, Inc.

Dated: Feb. 5, 1991

/s/ John Mitchell
John Mitchell, Esq.
P.O. Box 367
Calais, ME 04619
Counsel for
Walter Aniskoff, Jr.

Dated: Feb. 1, 1991

/s/ Torrey Sylvester
Torrey Sylvester, Esq.
64 Main Street
Houlton, ME 04730
Counsel for the Inhabitants of the
Town of Danforth

ORDER

The above-stipulated Amended Judgment is hereby approved and the Clerk is directed to make an entry on the docket reflecting the filing of this Stipulation and a separate entry reflecting the above Amended Judgment.

Dated: 2/15/91

/s/ Eugene Beaulieu
Eugene Beaulieu, Justice

Filed and Entered 2/19/91

IN THE SUPREME COURT
OF THE UNITED STATES

[Caption Omitted in Printing]

Order Granting Petition for Writ of Certiorari entered June 22, 1992.

No. 91-1353

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

BRIEF FOR PETITIONER

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Counsel for Petitioner

QUESTION PRESENTED

Whether Section 525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. § 525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

PARTIES TO THE PROCEEDING

In addition to the captioned parties, the Inhabitants of the Town of Danforth, Maine, and H.C. Haynes, Inc. are also respondents in this case.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-1353

THOMAS F. CONROY,
Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Maine (Pet. App. 42-46) is reported at 599 A.2d 426 (Me. 1992). The opinion of the Maine Superior Court (Pet. App. 24-41) is unreported.

JURISDICTION

The judgment of the Supreme Judicial Court of Maine was entered on November 27, 1991. The petition for a writ of certiorari was filed on February 20, 1992, and was granted by

this Court on June 22, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTE INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 (the "Relief Act"), as amended, 50 U.S.C. App. § 525 ("Section 525"), provides:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

STATEMENT

Section 525 of the Relief Act provides that "[t]he period of military service shall not be included in computing" any statute of limitations period or "any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The issue in this

[1]On March 18, 1991, Congress amended Section 525 by replacing a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present "October 6, 1942." Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. This amendment does not affect the question presented here, and petitioner refers throughout this brief to the present version of Section 525.

case is whether, in order to invoke the redemption protection of Section 525, a service member must establish hardship resulting from his military service, even though Section 525 contains no explicit hardship requirement. The Maine Superior Court, answering that question in the affirmative, dismissed quiet title suits against the respondents on the ground that petitioner, a United States Army Colonel, had failed to show that his military service had somehow prevented him from paying his property taxes (Pet. App. 24-41). The Supreme Judicial Court of Maine affirmed by an equally divided court (Pet. App. 42-46).

1. Petitioner, Col. Thomas F. Conroy, was on continuous active duty in the United States Army from 1966 through the date of trial in September, 1990 (Pet. App. 25; J.A. 4). As is common in the military, Col. Conroy's duties required him and his family to relocate more than a dozen times, both within the United States and abroad. Specifically, between November, 1966 and September, 1990, Col. Conroy was stationed at the following locations (Pet. App. 26):

Fort Campbell, Kentucky	Nov. 1966 - Sept. 1967[2]
Republic of Vietnam	Nov. 1967 - Nov. 1968
Eglin AFB, Florida	Dec. 1968 - Oct. 1970
Fort Benning, Georgia	Oct. 1970 - July 1971
Fort Devens, Mass.	Aug. 1971 - June 1973
Boston Army Base, Mass.	June 1973 - June 1975
Fort Leavenworth, Kansas	July 1975 - July 1976
Republic of Korea	Aug. 1976 - Aug. 1977
Fort Devens, Mass.	Sept. 1977 - May 1980
Westover AFB, Mass.	June 1980 - July 1982
Fort Devens, Mass.	Aug. 1982 - Jan. 1986

[2]The trial court's opinion contains a typographical error on the dates applicable to Col. Conroy's tour at Fort Campbell. The correct dates are from November, *1966* (not 1967) through September, 1967. *See* Record on Appeal, Affidavit of Thomas F. Conroy at 1-2, ¶ 5 (Jan. 25, 1988). *Cf.* Pet App. 26.

Rome, Italy	Jan. 1986 - Aug. 1986
Brunssum, Netherlands	Aug. 1986 - trial date[3]

Each time he was reassigned to a new station, Col. Conroy gave notice to the local servicing postal facility, the postal clerk for his unit of assignment, and all of the parties with whom he was doing business (J.A. 11).

2. In May of 1973, Col. Conroy purchased a parcel of land in Danforth, Maine, on which he eventually planned to build "a little cabin . . . [to use] as kind of a get away for the entire family" (J.A. 6). Between 1973 and 1983, Col. Conroy paid all real estate taxes due on his property (which, as of 1983, totaled $140 per year), notwithstanding his numerous transfers and other temporary assignments (Pet. App. 26; J.A. 8, 32). In addition, he consistently notified respondent, the Town of Danforth (the "Town"), of any change of address (J.A. 11).

In 1984 and 1985, however, Col. Conroy did not receive his property tax bills from the Town (Pet. App. 27). He wrote to the Town inquiring about his 1984 bill but received no reply (Pet. App. 27).[4] Upon moving overseas in 1986, Col. Conroy took no further action (Pet. App. 27). The Town sent notices to Col. Conroy regarding his tax bills for 1984, 1985, and 1986, but they were all returned as "undeliverable as addressed and unable to

[3]In addition to changing official duty stations, Col. Conroy was ordered to spend portions of his time elsewhere, as when he spent a good part of 1984 in Beruit, Lebanon (J.A. 12).

[4]The Superior Court erroneously indicated that Col. Conroy's testimony was that he wrote to the Town only in *late* 1985 inquiring about both his 1984 and 1985 bills (Pet. App. 27). Col. Conroy actually testified that he wrote in early 1985 (J.A. 12), and he swore in an affidavit that he wrote in early 1985 and followed up again later that year. Record on Appeal, Affidavit of Thomas F. Conroy at 2, ¶ 9 (Jan. 25, 1988).

forward" (Pet. App. 28).[5] The Town also sent Col. Conroy notices of tax liens and impending automatic foreclosure, which were also returned as undeliverable (Pet. App. 28).

3. Under Maine law, a town may impose a tax lien on property for which taxes are delinquent for eight or more months. Maine Rev. Stat. Ann. tit. 36, §§ 552, 942 (West 1978). After the taxpayer is notified (personally or by mail), the tax collector may record a tax lien certificate in the county land records, creating a tax lien mortgage. *Id.* §§ 942, 943. The taxpayer must redeem the property by paying the delinquent taxes within 18 months, or the tax lien mortgage is automatically foreclosed. *Id.* § 943.

On December 22, 1986, the Town, acting pursuant to the foregoing Maine statutes, sold petitioner's property in two parcels to respondents Walter S. Aniskoff, Jr. ("Aniskoff") and H.C. Haynes, Inc. ("Haynes") (Pet. App. 28). Both sales were in the form of quitclaim deeds.[6]

4. On November 20, 1987, Col. Conroy brought suit in Maine District Court against Aniskoff and the Town to quiet title to the portion of Col. Conroy's land that the Town had quitclaimed to Aniskoff (J.A. 1). On July 15, 1988, Col. Conroy brought a quiet title suit against Haynes in Maine Superior Court

[5]The Superior Court found that the notices were sent to Fort Devens (Pet. App. 27), but Col. Conroy testified that they must have been sent elsewhere (J.A. 11), and the record confirms that they were actually sent to Col. Conroy's previous address, Westover AFB. Record on Appeal, Supplemental Affidavit of Byron Gould at 1, ¶ 1 (July 12, 1988).

[6]Record on Appeal, Pl. Ex. 2, 4 (deeds); *see also* Record on Appeal, Transcript at 10-11 (Sept. 26, 1990) (admitting exhibits). Under Maine law, "a quit claim deed is only effective to convey whatever interest the grantor may have had in the land." *Ricker v. United States*, 417 F. Supp. 133, 140 (D. Me. 1976). *See* Maine Rev. Stat. Ann. tit. 33, § 161 (West 1988).

regarding the other parcel of Col. Conroy's land (J.A. 1).[7] In both complaints, Col. Conroy claimed that Section 525 had prevented the Town from acquiring title to his property. The suit against Aniskoff and the Town was removed by the defendants to the Superior Court, which granted Col. Conroy's motion to consolidate the actions (J.A. 2).

5. The consolidated trial was held on September 26, 1990. At trial, the parties stipulated (Pet. App. 28-29):

> [A]ll the statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and . . . were it not for the Soldiers and Sailors [sic] Civil Relief Act, the Town [sic] title would have been perfected in this particular instance.

On November 6, 1990, the Superior Court rendered an opinion (Pet. App. 24-41) dismissing all claims against respondents on the ground that Section 525 "afford[ed] [Col. Conroy] no relief from the Town's acquisition and subsequent sale of his Danforth, Maine, property" (Pet. App. 41). The court recognized initially that this Court's decision in *LeMaistre v. Leffers*, 333 U.S. 1 (1948), had found that Section 525 constituted an "absolute bar" to the running of limitations periods on behalf of military personnel (Pet. App. 32). *LeMaistre*, the court noted, had been "founded on the general principle of statutory interpretation providing that where the language of a statute is clear, it is to be

[7]Col. Conroy also sought relief against Haynes on the ground that Haynes had willfully and knowingly removed timber from part of Col. Conroy's land, even after being informed by Col. Conroy's attorney that Haynes did not have good title to the land as a result of Section 525 (Pet. App. 43). Herbert Haynes, president of Haynes, admitted at trial that he continued to cut down and remove timber even after his own attorney confirmed that Col. Conroy had a right to redeem the property under Section 525 (J.A. 20-27). The courts below did not reach this issue because of their holding that Section 525 requires a showing of prejudice.

applied according to its plain meaning" (Pet. App. 32-33). The court also acknowledged that many other courts had similarly relied on the plain language of Section 525 to suspend statutes of limitations in cases involving members of the military (Pet. App. 32 (citing numerous cases)).

The court noted, however, that other courts had held that limitations periods may be tolled under Section 525 only "upon a showing that said military service resulted in hardship excusing timely legal action" (Pet. App. 33). The court explained that this contrary line of cases was grounded upon two notions. First, the Relief Act "was only intended to provide relief for one subject to military service by conscription who is called away from civilian life to distant lands and faced with threats of war" (Pet. App. 34). The court noted that *LeMaistre* itself involved wartime service (Pet. App. 36). Second, to allow "career military servicemen not handicapped by their military status" to benefit from Section 525 would be "absurd and illogical" (Pet. App. 34), since those servicemen could then purchase property, ignore their tax responsibilities, and redeem the property years later following the conclusion of military service (Pet. App. 37-39). Choosing to follow this latter line of cases, the court held that Section 525 "will toll the running of a redemption period only where the serviceman can show a hardship caused by active duty in the military" (Pet. App. 40). Finding that Col. Conroy had failed to allege or establish hardship, the court dismissed his lawsuits (Pet. App. 40-41).

6. Col. Conroy timely appealed to the Supreme Judicial Court of Maine.[8] On November 27, 1991, that court affirmed

[8]The Supreme Judicial Court initially remanded the case to the Superior Court because the latter court's order had not dismissed cross-claims and counterclaims that had remained when Col. Conroy's claims were dismissed (J.A. 1). On February 19, 1991, the Superior Court issued an amended judgment and order correcting the error (J.A. 37), and Col. Conroy timely appealed.

the Superior Court's decision by an evenly divided court (Pet. App. 42-46).

SUMMARY OF ARGUMENT

It is well established that when a statute is unambiguous, it is the duty of this Court to apply it as written. *E.g.*, *United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 241 (1989). In this case Section 525 clearly states that the period of redemption for real property sold for non-payment of taxes is tolled for a service person's period of service. No showing of prejudice is required.

The structure of the Relief Act confirms this plain reading of Section 525 by demonstrating that Congress carefully imposed prejudice requirements where it deemed them important. In contrast to Section 525, many sections of the Relief Act expressly condition relief on a showing of prejudice. *E.g.*, 50 U.S.C. App. § 521 (stay of proceedings involving service person). Other sections of the Act apply *without* a demonstration of prejudice. *E.g.*, 50 U.S.C. App. § 561(1) (rights to federal lands not forfeited). Finally, one section of the Act, Section 560, juxtaposes a provision conditioning relief upon a showing of hardship with one providing relief without any qualification. 50 U.S.C. App. §560 (applying to real property owned and occupied for dwelling, professional, business or agricultural purposes).

Contrary to the decision of the Maine Superior Court, which imposed a prejudice requirement in order to avoid "absurd results," there is no reason to ignore the plain meaning of Section 525. This Court has made clear that a court may not disregard a statute's plain meaning because of concern about "absurd results" unless (i) the statute leads to consequences that are so bizarre that Congress could not possibly have intended them, and (ii) Congress has given a clear indication that the results dictated by a plain reading were not intended. *See, e.g.*, *Demarest v. Manspeaker*, 111 S.Ct. 599, 604 (1991); *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). Neither element is present here.

Section 525 rationally serves Congress' goal of providing protection for service personnel during periods of military service so that they can concentrate on their military duties, and Congress has provided no clear indication that a plain reading of Section 525 is inappropriate. Finally, the difficulties that would arise if this Court attempted to rewrite Section 525 -- such as ascertaining the proper burden of proof -- confirm the wisdom of applying the statute as written.

ARGUMENT

SECTION 525 OF THE RELIEF ACT DOES NOT REQUIRE MILITARY PERSONNEL TO DEMONSTRATE PREJUDICE IN ORDER TO TOLL THE PERIOD FOR REDEMPTION OF REAL PROPERTY SOLD FOR NONPAYMENT OF TAXES

A. By Its Plain Terms, Section 525 Contains No Prejudice Requirement

1. It is fundamental that where "[a] statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The reason for this rule is that there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (citation omitted). When a court adds terms to those drafted by Congress, it "transcends the judicial function," *Iselin v. United States*, 270 U.S. 245, 251 (1926), and undermines the Court's salutary "deference to the supremacy of the Legislature." *United States v. Locke*, 471 U.S. 84, 95 (1985).

Accordingly, when the terms of a statute are unambiguous, this Court will not permit the use of either legislative history or rules of statutory construction to override those terms except in "rare

and exceptional circumstances." *King v. St. Vincent's Hosp.*, 112 S. Ct. 570, 575 n.14 (1991) (citation omitted); *see, e.g., Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 465-466 (1989) (construing statutes to avoid constitutional problems); *United States v. Brown*, 333 U.S. 18, 27 (1948) (avoiding "patently absurd consequences"). As a general rule, "[i]nconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation." *United States v. Missouri Pac. R. Co.*, 278 U.S. 269, 277-278 (1929); *accord, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 112 S. Ct. 2589, 2598 (1992).

The reasons for applying the plain language rule are particularly compelling where the statute accords benefits to military personnel. This Court has long held that, even if such a statute is ambiguous, the ambiguity should be resolved in favor of military personnel. *See, e.g., King*, 112 S. Ct. at 574 n.9; *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977); *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). It follows *a fortiori* that a court should not construe such a statute *against* military personnel where that construction conflicts with the statute's plain language.

2. There can be no dispute that Section 525 of the Relief Act, by its terms, imposes no requirement that the service person demonstrate prejudice. That section states, in pertinent part, that "[t]he period of military service shall not be included . . . in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." 50 U.S.C. App. § 525.[9] Section 511(2), in turn, defines "period of military service" as

[9]Likewise, the portion of Section 525 governing statutes of limitation contains no prejudice requirement. *See* 50 U.S.C. App. § 525 ("The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding . . . by or against any person in military service. . . .").

"the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service . . . ." 50 U.S.C. App. 511(2). Congress could not have been clearer: a service member's entire period of military service after October 6, 1942, is excluded from any period provided by law for the redemption of real estate sold for non-payment of taxes.

3. Although numerous courts have applied Section 525, we know of no court that has ever found its language to be ambiguous. Indeed, more than 40 years ago, this Court examined the precise language at issue and found it to be clear and unambiguous. In *LeMaistre v. Leffers*, 333 U.S. 1 (1948), this Court rejected arguments attempting to limit Section 525, contrary to its terms, to cases involving (i) passage of title prior to redemption and (ii) land owned or occupied for dwelling, professional, business, or agricultural purposes. The Court reasoned that it could not accept those arguments "without drastically contracting the language of [Section 525] and closing [its] eyes to [the statute's] beneficent purpose." 333 U.S. at 6. In the course of its decision, the Court specifically noted that Section 525 tolled the period of redemption for petitioner "as long as he was in the military service." *Id.* at 3.[10]

Since *LeMaistre*, numerous courts have squarely addressed whether Section 525 imposes a prejudice requirement and have concluded, based on the statute's plain language, that no such requirement exists. *See, e.g., Mason v. Texaco, Inc.*, 862 F.2d 242, 245 (10th Cir. 1988); *Ricard v. Birch*, 529 F.2d 214, 217

[10]The Court also noted that the statute "must be read with an eye friendly to those who dropped their affairs to answer their country's call." *LeMaistre*, 333 U.S. at 6. Relying on that language, the Maine Superior Court distinguished the case on the ground that it involved a serviceman who served for only three years during World War II (Pet. App. 35-36). *LeMaistre*, however, was premised not on that fact but on the language of the statute. And, as noted on page 21, *infra*, Section 525 was extended to apply during peacetime.

(4th Cir. 1985); *Ray v. Porter*, 464 F.2d 452, 455-56 (6th Cir. 1972); *McCance v. Lindau*, 492 A.2d 1352, 1356 (Md. Ct. Spec. App. 1985); *Jones v. Garrett*, 386 P.2d 194, 200 (Kan. 1963); *see also Illinois Nat'l Bank of Springfield v. Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945) (predating *LeMaistre*). Even those courts that have required hardship under Section 525 have not identified any ambiguity but instead have imposed such a requirement despite the statutory language (*see* Pet. App. 33-40 (discussing cases)). In short, there is no basis for finding any ambiguity in Section 525.

B. Other Provisions of the Relief Act Confirm that Congress' Failure to Include a Prejudice Requirement in Section 525 Was Deliberate

Standing alone, Section 525 unambiguously affords relief without requiring the service member to demonstrate hardship. This reading of Section 525 is confirmed by examining the other parts of the Relief Act.

It is a basic rule of statutory construction that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation omitted); *accord, e.g., General Motors Corp. v. United States*, 496 U.S. 530, 537-38 (1990); *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820, 824-25 (1990). Applying this principle here, it is clear that Congress' failure to require prejudice in Section 525 was deliberate.

First, in contrast to Section 525, many sections of the Relief Act expressly condition relief on a showing of hardship. Some provisions require the military person to demonstrate that his ability to fulfill an obligation was prejudiced by reason of his military service. For instance, Section 520 provides that upon application by a service member (or his legal representative), a

court may reopen a judgment entered against the service member during the period of service if "it appears that such person was prejudiced by reason of his military service in making his defense thereto." 50 U.S.C. App. § 520(4).[11] Other provisions of the Relief Act appear to create a rebuttable presumption that the service member is entitled to relief. For example, Section 532 provides for a stay of proceedings to enforce various secured obligations unless the ability of the service member to meet the obligation "is not materially affected by reason of his military service." 50 U.S.C. App. § 532(2).[12] These sections demonstrate that Congress knew how to impose a prejudice requirement when it so intended.[13]

Second, like Section 525, numerous other sections of the Relief Act apply *without* a showing of hardship or prejudice. For

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[11] Additional sections applying that standard of prejudice include: 50 U.S.C. App. § 522 (relief against enforcement of fine or penalty for noncompliance with terms of contract); *id.* § 573 (deferral of income tax collection).

[12] Additional sections applying that standard of prejudice include: 50 U.S.C. App. § 521 (stay of proceedings involving service person either as plaintiff or as defendant); *id.* § 523 (staying judgment, garnishment, or attachment against service member); *id.* § 526 (capping interest rates on obligations or liabilities entered prior to military service); *id.* § 530(2) (staying eviction or distress proceedings against dependents of military personnel); *id.* § 531(3) (staying proceedings to rescind or terminate installment contract or to resume possession of property for nonpayment of installment or for any other breach of terms of agreement); *id.* § 535(2) (limiting foreclosure or enforcement of lien for storage of personal property); *id.* § 536 (extending benefits of Sections 530-536 to dependents of service members unless dependents are not prejudiced); *id.* § 590 (staying enforcement of obligations, liabilities, and taxes).

[13] Two of the cases relied upon by the Maine Superior Court (Pet. App. 33-40) viewed Congress' imposition of prejudice requirements in other sections of the Relief Act as proof that the Act is "bottomed" on a concern for prejudice, allowing the courts to *infer* a similar prejudice requirement in Section 525. *Bailey v. Barranca*, 488 P.2d 725, 729 (N.M. 1971); *King v. Zagorski*, 207 So. 2d 61, 65 (Fla. Dist. Ct. App. 1968). These cases, of course, have turned principles of statutory construction on their head.

example, Section 574 protects military personnel from potential multiple state taxation of income or personal property by providing that the military person's domiciliary state is the only state that may impose such taxation, regardless of whether that state actually imposes such tax. 50 U.S.C. App. § 574; *see Dameron v. Brodhead*, 345 U.S. 322, 326 (1953) (relief under Section 574 does not require any demonstration that the military person is subject to multiple taxation). Similarly, under Section 561(1), rights to federal lands acquired prior to entering military service are not forfeited during the period of service by reason of the service member's absence or failure to fulfill obligations under mining, mineral leasing, or other laws. 50 U.S.C. App. § 561(1).[14]

Third, one section of the Relief Act, Section 560, juxtaposes a subsection conditioning relief upon a showing of hardship with a subsection providing relief without qualification. Section 560 governs the collection of property taxes on real property "owned and occupied for dwelling, professional, business, or agricultural purposes by a person in the military service or his dependents." 50 U.S.C. App. § 560.[15] Under subsection two, leave of court is required to sell such property to collect unpaid taxes, and

[14]Other sections that do not require a showing of hardship include: 50 U.S.C. App. § 534 (leases covering dwelling, business, professional or agricultural premises may be terminated by person entering military service); *id.* § 561(2) (permittee under federal lands grazing law (43 U.S.C. § 315 *et seq.*) may suspend permit or license during military service and receive reduction or refund of grazing fees); *id.* § 564 (desert-land entries made or held under the desert-land laws (43 U.S.C. § 321 *et seq.*) prior to entering military service may not be contested or canceled for failure to make improvements during the period of military service); *id.* § 565 (requirements for improvements of mining claims suspended during period of military service, and recorded mining claims not subject to forfeiture for nonperformance of annual assessments); *id.* § 566 (holder of mineral permit or lease on federal lands may suspend permit or lease for period equivalent to period of military service).

[15]This provision is inapplicable to this case because Col. Conroy was not occupying the land (J.A. 6, 15).

collection proceedings may be stayed "unless in [the court's] opinion the ability of the person in the military to pay such taxes or assessments is not materially affected by reason of such service." *Id.* § 560(2). In sharp contrast, the very next subsection provides unconditionally that a service member "shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." *Id.* § 560(3). The fact that these provisions appear together in the same section of the Relief Act demonstrates conclusively that where Congress intended to impose a hardship requirement, it made that requirement plain.[16]

In sum, the Relief Act reveals that Congress carefully determined throughout the statute whether to impose a prejudice standard (and, if so, on whom to place the burden of proof). Since Congress did not impose such a requirement in Section 525, it is not the proper function of a court to provide one.

C. There Is No Legitimate Reason to Ignore Section 525's Plain Meaning

Notwithstanding Section 525's plain language, the courts below imposed a requirement that Col. Conroy demonstrate hardship (Pet. App. 40, 45). The Superior Court invoked what it characterized as "the cardinal rule of statutory construction that demands that statutes be interpreted to avoid absurd, unreasonable or illogical results" (Pet. App. 36). In so holding, the court ignored the extremely limited scope of this rule of construction and misapplied it to the facts of this case.

[16]Further evidence of Congress' care in drafting the Relief Act is contained in Section 527, which provides that Section 525 "shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States." 50 U.S.C. App. § 527. Section 527 demonstrates that Congress understood the broad protection afforded by Section 525 and knew how to limit the scope of Section 525 when it deemed such limitation necessary.

1. Contrary to the Superior Court's reasoning, a court may not disregard a statute's plain language merely because it questions the wisdom of applying the statute as written. Rather, the court must determine that the plain language leads to "patently absurd consequences," *United States v. Brown*, 333 U.S. at 27, that are "so bizarre that Congress could not have intended" them. *Demarest v. Manspeaker*, 111 S. Ct. 599, 604 (1991) (citation omitted). More specifically, the absurdity "must be so gross as to shock the general moral or common sense." *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). Furthermore, "[i]t is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation." *Id.* Instead, "there must be something to make plain the intent of Congress that the letter of the statute is not to prevail." *Id.*; *accord, e.g., Griffin*, 458 U.S. at 575 (quoting *Crooks*); *see also International Primate Protection League v. Administrators of Tulane Educational Fund*, 111 S. Ct. 1700, 1708 (1991) (question is whether Congress "could rationally" have chosen to enact the provision as written). Consistent with these principles, this Court has refused to deviate from the plain language of statutes even when the results are "harsh," *Griffin*, 458 U.S. at 576, "curious," *TVA v. Hill*, 437 U.S. 153, 172 (1978), or "stark and troubling," *Estate of Cowart*, 112 S. Ct. at 2598.[17]

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[17]*See, e.g., Griffin*, 458 U.S. at 576 (applying statute awarding double back pay to seaman even though "it is probably true that Congress did not precisely envision the grossness of the difference" between the harm suffered and statutory award); *TVA v. Hill*, 437 U.S. at 172 (Section 7 of Endangered Species Act, 16 U.S.C. § 1536 *et seq.*, required halting dam project because it would threaten "a relatively small number of three-inch fish," despite the fact that the dam was "virtually completed" and had cost taxpayers "more than $100 million"); *Estate of Cowart*, 112 S. Ct. at 2598 (interpreting plain language of statute to foreclose claims for disability payments despite "recogniz[ing] the stark and troubling possibility that significant numbers of injured workers or their families may be stripped of their . . . benefits . . . and that [the statute's] forfeiture penalty creates a trap for the unwary").

Just last Term, this Court in *King v. St. Vincent's Hosp.*, *supra*, faced a situation remarkably similar to this case. The statute at issue was Section 2024(d) of the Veterans' Reemployment Rights Act, 38 U.S.C. § 2021 *et seq.*, which guarantees that reservists who are called to military duty will be given leaves of absence by their employers and will be permitted to return to their jobs with the same seniority and status that they would have had if they had not left. Despite the statute's clear language, St. Vincent's Hospital refused to grant King's request for a three-year leave of absence, advising him that it was "unreasonable and thus beyond the Act's guarantee." *King*, 112 S. Ct. at 572. In ruling on St. Vincent's declaratory judgment action, both the district court and the Eleventh Circuit held for the hospital on the ground that "leave requests for protection under § 2024(d) must be reasonable." *Id.* Significantly, the Eleventh Circuit found that imposing a reasonableness requirement was "necessary to prevent an absurd, unjust, or unintended result." *King v. St. Vincent's Hosp.*, 901 F.2d 1068, 1072 (11th Cir. 1990).

This Court unanimously reversed. The Court first noted that Section 2024(d) "is free of any express conditions upon the provisions in contention . . . ." *King*, 112 S. Ct. at 573. The Court then acknowledged that "congressionally mandated leave of absence can be an ungainly perquisite of military service, when the tour of duty lasts as long as King's promises to do," and that the Court might "reasonably accord some significance to the burdens imposed on both employers and workers" if it "were free to tinker with the statutory scheme." *Id.* But the Court refused to rewrite Section 2024(d), noting that other provisions of the Reemployment Act placed explicit time limits on the period of protection. *Id.* at 573-74. The Court explained that, "[g]iven the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions, we infer that the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." *Id.* at 574.

As *King* demonstrates, because Section 525 is clear and is not patently absurd on its face, the Court need not – and should not – embark on an inquiry into the policies and legislative history of that section. In any event, as demonstrated below, such an analysis only confirms that the statute must be applied as written.

2. Section 525 is part of a comprehensive scheme designed to protect members of the military by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." 50 U.S.C. App. § 510. *See also* Military Selective Service Act of 1948, 50 U.S.C. App. §§ 451, 464 (extending Relief Act in peacetime; purposes included achieving and maintaining armed forces necessary "to insure the security of this Nation"). Section 525 furthers this objective by, *inter alia*, suspending, during military service, the period for redeeming real property sold for tax delinquencies.

Congress may legitimately have believed that Section 525's bright-line standard was necessary to ensure that military personnel do not lose their property because of a tax deficiency, which may amount to only a tiny fraction of the property's value. Such solicitude is neither unusual nor "patently absurd." Even in peacetime, service members make great personal sacrifices pursuing the defense needs of the nation.[18] Congress has

[18]Military personnel are stationed at 481 military installations throughout the United States, 10 installations in United States territories and possessions, and at 136 installations in foreign countries, for a total of 627 installations worldwide. U.S. Dep't of Defense, *Worldwide List of Military Installations (Major, Minor, and Support) 1990* (Revised July 1991). Service personnel are subject to frequent relocation in their duties. *See* Hammerstrom, *Equitable Distribution of Military Pensions? Re-Thinking the Uniformed Services Former Spouses Protection Act*, 9 Law & Ineq. J. 315, 332 (1991). And even when there is no declared war, military personnel must be constantly vigilant in defense of the nation. United States military personnel have been involved in at least 50 situations of conflict or potential conflict in the 47 years since the close of World War II. *See* Congressional Research Service, *CRS Report for Congress: Instances of Use of United States Armed Forces Abroad, 1798-1989* 14-19 (Dec. 4, 1989); Congressional Research Service, *CRS Issue Brief: War Powers Resolution: Presidential Compliance* 12 (Aug. 6, 1992).

frequently provided generous benefits to military personnel,[19] and this Court has routinely upheld such provisions. *See, e.g., Ridgway v. Ridgway*, 454 U.S. 46, 60 (1981) (federal statute allowing serviceman to designate "any" insurance beneficiary in military insurance policy overrides Maine state law governing divorce decrees). There is simply no basis for rewriting Section 525 to include a prejudice requirement.[20]

The only concern expressed by the Maine Superior Court in finding an absurd result is that military personnel could deliberately withhold real estate taxes, knowing that they could use Section 525 as a defense if the property were sold to satisfy the tax delinquencies (*see* Pet. App. 36-39); *see also King v. Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968) (expressing similar concern); *Bailey v. Barranca*, 488 P.2d 725, 728 (N.M. 1971) (same); *Pannell v. Continental Can Co.*, 554 F.2d 216, 225 (5th Cir. 1977) (same). In fact, however, no evidence has been cited by any court that Section 525 *has* been so

[19]In addition to the Relief Act, other statutory provisions affording benefits to military personnel include: 38 U.S.C. § 2021 *et seq.* (reemployment rights); 20 U.S.C. § 921 (free public education for dependents of military personnel overseas); 37 U.S.C. § 403 (housing allowance); 12 U.S.C. § 1715m (mortgage insurance); 10 U.S.C. § 1071 *et seq.* (medical and dental care for members, certain former members and dependents); *id.* § 1251 *et seq.* (retirement pay); *id.* § 1447 *et seq.* (survivor benefits); *id.* § 1475 *et seq.* (death gratuity).

[20]The fairness of applying Section 525 without imposing a hardship standard is confirmed by the fact that the statute of limitations portion of the section applies, by its terms, both in suits *by* and *against* the service member. *See, e.g., Mason v. Texaco, Inc.*, 862 F.2d 242 (10th Cir. 1988) (action by widow of serviceman); *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975) (action brought against serviceman). Thus, individuals with claims against service members also benefit by Section 525.

abused, notwithstanding the fact that for almost 50 years courts have applied the statute's plain language without adding a prejudice requirement. *See Illinois Nat'l Bank of Springfield v. Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945). Furthermore, it is not unreasonable for Congress to have assumed that military personnel would not deliberately shirk their obligation to pay taxes. *See generally* 88 Cong. Rec. 5551 (1942) (remarks of Rep. Kilday) (recognizing that great majority of military personnel will not abuse Relief Act's protections by deliberately shirking obligations); *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955) (noting that "nearly all" military personnel have a "high degree of honesty and sense of justice"). And notwithstanding Section 525, a service member ordinarily would have little practical reason for deliberately withholding his real estate taxes, since the gain from delaying the payment of property taxes under Section 525 would be offset, at least in part, by the fact that interest would continue to accrue on the delinquent taxes. *See* 50 U.S.C. App. § 560(4) (providing that unpaid taxes and assessments shall accrue with interest at a rate not to exceed six percent).

Applying the plain language of Section 525 certainly would not be unreasonable in this case, and the Court should not stretch its imagination to hypothesize possible absurd fact situations. *Cf. Ridgway*, 454 U.S. at 60 n.9 (refusing to "address the legal aspects of extreme fact situations" not presented by the case before it). There is no allegation that Col. Conroy's nonpayment of taxes was a deliberate attempt to abuse the protections of Section 525. Col. Conroy had faithfully paid his real estate taxes for more than a decade. Only upon losing contact with the Town as a result of his relocations did he fail to make payment for 1984-1986. Col. Conroy testified that he received no tax bills for those years, that he had previously notified the Town of his changes in address, and that he wrote to the Town about the matter in 1985 but received no response. Pet. App. 26-27; *see* note 4, *supra*. Nor would allowing Col. Conroy to recover his property upset any longstanding, settled expectations on the part

of respondents Aniskoff and Haynes, Inc., who received mere quitclaim deeds from the Town in December, 1986. *See* note 6, *supra* (quitclaim deed conveys only whatever interest grantor had in the property). The Superior Court's mere speculation that some service member in some future case *might* abuse the privilege provided by Section 525 does not make the statute "patently absurd."

3. The Maine Superior Court, in finding an absurd result, failed to inquire into whether "there [was] something to make plain the intent of Congress that the letter of" Section 525 should not prevail. *Crooks*, 282 U.S. at 60. Had it done so, it would have found no evidence that Congress intended to impose a hardship requirement under Section 525. To the contrary, the scant legislative history that exists is consistent with Section 525's plain language.

To begin with, in 1948 Congress specifically extended the Relief Act as a peacetime statute. Military Selective Service Act, ch. 625, §§ 1, 14, 62 Stat. 604, 623 (1948) (codified at 50 U.S.C. App. §§ 451, 464). This fact rebuts the Superior Court's suggestion (Pet. App. 40) that the Relief Act's protections should generally be available only during wartime or national emergencies.

Moreover, the limited legislative history pertaining to Section 525 (enacted in 1942) provides no valid basis for ignoring the statute's plain meaning. The Conference Report on the 1942 Amendments did not focus on the provision at all, *see* H.R. Rep. No. 2481, 77th Cong., 2d Sess. (1942), and the committee reports on those amendments merely recited the purpose of Section 525 in language identical to the statutory terms, making no reference to a hardship requirement. *See* H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942). It is also notable that both the House and Senate Reports provided that "[a]ny doubts that may arise as to the scope and application of the [Relief Act] should be resolved

in favor of the person in military service involved." H.R. Rep. No. 2198 at 2; S. Rep. No. 1558 at 2. Plainly, Congress did not intend for courts to rewrite the statute and *deprive* service members of statutory benefits.[21]

To be sure, a few members of Congress indicated during the debates that the Relief Act is grounded on a concern for prejudice.[22] Nonetheless, the one explicit reference to Section 525 in the floor debates suggested that the provision was unequivocal. *See* 88 Cong. Rec. 5551 (1942) (colloquy between Reps. Kilday, Springer) ("We provide in this amendment that the period [a serviceman] is in the Army shall not count within the period of redemption so that we place him whole [sic] while he is in the Army.").[23] In any event, reliance on floor debates violates this Court's teaching that where a statute is unambiguous,

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[21]It is also significant that the 1942 addition of a redemption provision was a Congressional response to this Court's decision in *Ebert v. Poston*, 266 U.S. 548 (1925). There, this Court held that a serviceman could not use the 1918 version of Section 525 to toll a redemption period because, *inter alia*, the statute contained no language specifically tolling such periods. *Id.* at 553-54 (noting Congress' "care and particularity" in drafting the statute). It is against the background of this Court's adherence to the letter of the Relief Act that Congress chose legislatively to overrule *Ebert without* adding a prejudice requirement to the section. *See* H.R. Rep. No. 2198 at 4 (citing *Ebert*); S. Rep. No. 1558 at 4 (same).

[22]*See, e.g.*, 88 Cong. Rec. 5368-69 (1942) (Rep. Brooks) (discussing relief from default of obligations due to reduction in income); *id.* at 5363 (Rep. Sparkman) (expressing concern over hardships of military service); *see Bailey*, 488 P.2d at 728-729 (quoting foregoing Brooks and Sparkman remarks).

[23]One court imposing a prejudice requirement under Section 525 relied on "the House Report on the Bill, No. 181." *Bailey*, 488 P.2d at 729. That report does not involve the 1942 Amendments, nor even the 1940 Relief Act. Rather, the report pertained to the Soldiers' and Sailors' Civil Relief Act of *1918* (*see* H.R. Rep. No. 181, 65th Cong., 1st Sess. (1917)), which expired six months after the end of World War I and contained no counterpart to Section 525 relating to redemption of land sold for nonpayment of taxes. *See generally* Act of March 8, 1918, ch. 20, 40 Stat. 440.

it cannot "be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process." *West Virginia University Hospitals, Inc. v. Casey*, 111 S.Ct. 1138, 1147 (1991).

It is also significant that, notwithstanding the fact that numerous courts have applied the plain language of Section 525, Congress has never added a hardship requirement, even though it has amended various parts of the Relief Act – including Section 525 – on numerous occasions since 1942.[24] In short, there is no reliable evidence to suggest that Congress meant anything other than what it clearly said in Section 525.

4. Finally, the difficult issues that would be faced if this Court attempted to rewrite Section 525 confirm that the Court should stay its hand and apply the statute as written. The Maine

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[24]*See* Act of July 3, 1944, ch. 397, § 1, 58 Stat. 722 (expanding protection from state taxation by specifying that only state of domicile could tax service member's personal property); Act of April 3, 1948, ch. 170, § 6, 62 Stat. 160 (directing that refunds of life insurance premium payments made under Relief Act's premium guarantee program be credited against appropriations for claims made); Act of June 23, 1952, ch. 450, 66 Stat. 151 (establishing criminal penalties for foreclosure or seizure of service member's real property without prior court order); Pub. L. No. 85-857, § 14(76), 72 Stat. 1272 (1958) (repealing requirement that Veterans' Administration report annually to Congress on Relief Act's life insurance program); Pub. L. No. 86-721, § 1, 74 Stat. 820 (1960) (regarding proof of military status in default proceedings); Pub. L. No. 87-771, 76 Stat. 768 (1962) (expanding personal property tax exemption for service members stationed outside their state of domicile); Pub. L. No. 89-358, § 10, 80 Stat. 28 (1966) (raising rent eviction ceiling to $150); Pub. L. No. 92-540, tit. V, § 504, 86 Stat. 1098 (1972) (extending indefinitely powers of attorney executed by service members listed as missing in action during Vietnam era); Pub. L. No. 102-12, 105 Stat. 34 (1991) (numerous changes, including raising rent eviction ceiling to $1,200; extending power of attorney protection; adding professional liability protection; adding health insurance reinstatement rights; clarifying re-employment rights); Pub. L. No. 102-12, § 9(6), 105 Stat. 39 (1991) (substituting "Oct. 6, 1942" for "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942").

Superior Court found that Col. Conroy was a "career military serviceman" (Pet. App. 40) and thus could not establish hardship. But this reasoning makes no sense, since "[t]oday's military forces are purely volunteer services." *McCance*, 492 A.2d at 1355. The Superior Court also stated that Col. Conroy had presented no evidence of hardship (Pet. App. 40), but the court gave no indication of what sort of showing would be required. Indeed, the court provided no justification for placing the burden of proving hardship on the military person, as opposed to creating a rebuttable presumption of hardship. *See* pages 12-13 & nn. 11, 12 (noting apparently different prejudice burdens under various sections of the Relief Act); *cf. Boone v. Lightner*, 319 U.S. 561 (1943) (holding that trial court had discretion to allocate burden of proof under Section 201 of Relief Act, 50 U.S.C. App. § 521). If this Court were to affirm the decision below, the courts would then be faced with deciding how to formulate the prejudice standard and where to place the burden of proof.

Furthermore, by adding a hardship requirement in Section 525, the Court would invite future litigation over other unambiguous terms of the Relief Act. Courts would be faced with the question of whether to impose a prejudice requirement in numerous other sections of the statute that do not by their terms contain such a requirement. *See* pages 13-14 & n. 14, *supra*. Those courts would have to decide whether to adhere to the statutory language or to rewrite the language on policy grounds.

Most fundamentally, by affirming the decisions below, this Court would send the message to lower courts -- contrary to the Court's carefully developed jurisprudence -- that the plain meaning rule has no substance and that courts are now free to rewrite statutes at will. If Section 525 is to be rewritten, that task should be performed by Congress, not the courts.

CONCLUSION

For the foregoing reasons, the decision of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted,

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August, 1992

(9)

No. 91-1359

In The

Supreme Court of the United States

October Term, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., et al.,

Respondents.

On Writ Of Certiorari To The
Supreme Judicial Court Of Maine

BRIEF FOR RESPONDENTS

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STATEMENT

Thomas F. Conroy is a full colonel and career military officer who has been on continuous active duty with the United States Army from 1966 through the date of trial. (Pet. App. 16, 25; J.A. 4). In 1973, Col. Conroy while stationed at Ft. Devens, Massachusetts, purchased two vacant lots in the Town of Danforth, Maine. (J.A. 4, 16). The real estate consisted of unimproved parcels with no dwellings on them. (J.A. 15). The land was not used for professional, agricultural or business purposes. (J.A. 15). Subsequent to his acquisition of the property, Col. Conroy paid real estate taxes on the Danforth, Maine parcels notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe and the Far East. (J.A. 16-19). Col. Conroy last paid real estate taxes to the Town of Danforth for the year 1983. (J.A. 9). He did not pay real estate taxes for the Danforth, Maine parcels for the years 1984, 1985, and 1986. (Pet. App. 26-27). The Town of Danforth consistent with the state statutory law placed a lien upon the property for delinquent taxes. (Pet. App. 28-29). Since Col. Conroy failed to redeem the property within the eighteen (18) month period prescribed by statute, the tax lien mortgage was foreclosed. (Pet. App. 28-29). The Town of Danforth subsequently issued quitclaim deeds to respondents Walter S. Aniskoff and H.C. Haynes, Inc. on December 22, 1986. (Pet. App. 28).

In an effort to redeem his interest in the Danforth, Maine properties, Col. Conroy initiated a quiet title action and claimed that 50 U.S.C. App. § 525 (Soldiers' and Sailors' Civil Relief Act) prohibited the Town of Danforth from acquiring an interest in the property. (J.A. 1).

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., was promulgated in part for the following purpose:

> In order to provide for, strengthen, and expedite the national defense *under the emergent conditions* which are threatening the peace and security of the United States . . . provision is made to suspend enforcement of civil liabilities in certain cases . . . and to this end the following provisions are made *for the temporary suspension of legal proceedings* and transactions which may prejudice the civil rights of persons in such service.

50 U.S.C. App. § 510. (Emphasis added).

Title 50 U.S.C. App. § 525 provides in part that "the period of military service shall not be included in computing any period now or hereafter provided by any law . . . for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment." The question presented here is whether 50 U.S.C. App. § 525 absolutely protects Col. Conroy, a career serviceman, during his entire tenure in the military, from seizure and sale of his real property by the Town of Danforth as a result of his failure to pay taxes, or whether Col. Conroy must demonstrate a showing of prejudice resulting from his military service in order to come within the protection of Section 525. The Maine Superior Court determined that a demonstration of prejudice was necessary to come within the protection of Section 525. (Pet. App. 24-41). The Supreme Judicial Court of Maine affirmed by an equally divided Court. (Pet. App. 42-46).

1. Col. Conroy is a career serviceman who has been on continuous active duty in the United States Army from 1966 through date of trial. (Pet. App. 25, J.A. 4). Col. Conroy is a Maine native who owns a home in South Portland, Maine. (J.A. 4 and 7). Col. Conroy has paid taxes on his home in South Portland continuously since he purchased it in 1964. (J.A. 7, 18). Col. Conroy also owns a home in Wisconsin on which he pays real estate taxes. (J.A. 9).

2. In May 1973, Col. Conroy purchased two vacant lots of unimproved land in the town of Danforth, Maine. (J.A. 4 and 15). During the ten-year period subsequent to his acquisition of the Danforth, Maine properties he paid taxes to the Town of Danforth notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe and the Far East. (J.A. 16-19). In 1977, Col. Conroy was stationed in Korea but received his tax bill and paid it. (Pet. App. 26-27).

3. The last tax bill Col. Conroy received and paid was for the 1983 real estate taxes in Danforth. (J.A. 26). Although Col. Conroy continued to pay his real estate taxes to the City of South Portland, Col. Conroy failed to pay real estate taxes for the Danforth, Maine property for years 1984, 1985 and 1986. (J.A. 7, 19; Pet. App. 27). Col. Conroy received notice in 1987 from the Clerk of the Town of Danforth that the Danforth, Maine property had been sold for unpaid taxes. (J.A. 14).

4. During the period between August 1982 through January 1986, Col. Conroy was stationed at Fort Devens, Massachusetts. (Petitioner's Brief at 3). The trial justice specifically found that the record amply demonstrated

that the Town of Danforth sent notices to Col. Conroy at his Fort Devens address regarding tax bills for 1984, 1985, and 1986.[1] (Pet. App. 27-28). The trial court also found that the notices were returned to the Town as "undeliverable as addressed and unable to forward." (Pet. App. 28).

5. Since Plaintiff had not received any of his tax bills for 1984, 1985, or 1986, he testified that sometime in 1985 he forwarded correspondence to the Town of Danforth regarding these bills, but never received a reply. (Pet. App. 12). Col. Conroy subsequently moved overseas and took no further action to clarify the situation with the Town of Danforth in 1986. (Pet. App. 27).

6. The trial justice specifically found that the Town of Danforth never received notice that Col. Conroy had changed his address. (Pet. App. 28). The Town of Danforth also sent notices of tax liens and impending automatic foreclosure to Col. Conroy, but these were also returned as undeliverable. (Pet. App. 28). On or about December 22, 1986, the Town of Danforth conveyed the

[1] The trial justice specifically found that the notices had been sent to Fort Devens, Massachusetts. (Pet. App. 27-28). In his brief, Petitioner takes issue with this finding. (Petitioner's Brief at 5, Footnote 5). It should be noted that Col. Conroy never challenged this finding by the trial justice and any such challenge has been waived. In addition, Petitioner cites in support of his position an affidavit which was not considered by the trial justice during the course of trial. Since the trial justice's disposition of facts was based solely on the trial testimony and not on previously submitted affidavits in an unrelated proceeding, Petitioner's challenge to the Court's factual finding is improper and unpersuasive.

property by quitclaim deed to Respondents H.C. Haynes, Inc. and Aniskoff. (Pet. App. 28).[2]

7. Pursuant to Maine law, a taxpayer may redeem his property by paying the delinquent taxes within 18 months, or the tax lien mortgage is automatically foreclosed. 36 M.R.S.A. § 943.

8. On November 30, 1987, Col. Conroy initiated suit in the Maine District Court against Respondents Aniskoff and the Town of Danforth. (J.A. 1). On July 15, 1988, Col. Conroy brought a quiet title action against H.C. Haynes, Inc. in the Maine Superior Court. (J.A. 1). A consolidated trial was subsequently held on September 6, 1990. The parties stipulated that:

> . . . All the proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and that were it not for the Soldiers' and Sailors' Civil Relief Act, the Town title would have been protected in this particular instance.

9. The Superior Court rendered its opinion on November 6, 1990, (Pet. App. 24-41), dismissing all claims against Respondents. In its decision, the Superior Court discussed the various lines of cases interpreting Section 525 of the Soldiers' and Sailors' Civil Relief Act. After due consideration of the case law, the Superior Court determined that Section 525 "will toll the running of the redemption period only where the serviceman can show

[2] 33 M.R.S.A. § 161 provides that "a deed of release or quitclaim deed of the usual form conveys the estate which the grantor has or can convey by deed of any other form."

hardship caused by active duty in the military." (Pet. App. 40). Having determined that Col. Conroy failed to allege or establish hardship, the Plaintiff's action was dismissed. (Pet. App. 40-41).

10. Col. Conroy subsequently appealed to the Maine Supreme Judicial Court which affirmed the Superior Court's decision by an equally divided Court on November 27, 1991. (Pet. App. 42-46). This court granted Col. Conroy's Petition for Writ of Certiorari on June 22, 1992.

SUMMARY OF ARGUMENT

Fundamental rules of statutory construction require this Court to construe a statute in context. *King v. St. Vincent's Hospital*, 112 S.Ct. 570 (1991). The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., was promulgated to allow the temporary suspension of legal proceedings for military service personnel during emergent conditions. The Act permits a temporary suspension of the statute of limitations in order to allow military personnel and the United States to maintain the national defense. The interests of military personnel, however, must be balanced with the interests of society as a whole. In order to balance those interests, the Courts have recognized that the career military serviceman must demonstrate hardship or prejudice resulting from his military service in order to allow the temporary suspension of the statute of limitations pursuant to 50 U.S.C. App. § 525. In this instance, Col. Conroy failed to allege or prove any hardship or prejudice resulting from his military service.

The Maine Court, therefore, properly concluded that the statute of limitations could not be tolled pursuant to 50 U.S.C. App. § 525.

ARGUMENT

SECTION 525 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT REQUIRES MILITARY PERSONNEL TO DEMONSTRATE HARDSHIP OR PREJUDICE RESULTING FROM MILITARY SERVICE IN ORDER TO TOLL THE STATUTE OF LIMITATIONS FOR THE REDEMPTION OF REAL ESTATE SOLD FOR FAILURE TO PAY TAXES.

As this Court noted recently, it is a cardinal rule of statutory construction that a statute must be read as a whole "since the meaning of the statutory language, plain or not, depends on context." *King v. St. Vincent's Hospital*, 112 S.Ct. 570, 574 (1991). The application of that rule here requires the conclusion that a career serviceman must demonstrate prejudice from his military service in order to take advantage of the protections afforded by 50 U.S.C. App. § 525. The Soldiers' and Sailors' Civil Relief Act was promulgated as a result of pressure associated with the First World War in 1918 and was constitutionally justified in order to protect soldiers from suit during war. *See Pierrard v. Hoch*, 191 P.2d 328 (Or. 1920). Title 50 U.S.C. App. § 510 states the purpose of the Act, in part, as follows:

> In order to provide for, strengthen, and expedite the national defense under the *emergent conditions* which are threatening the peace and security of the United States . . . provision is made to

> suspend enforcement of civil liabilities in certain cases . . . and to this end the following provisions are made for the *temporary suspension of legal proceedings* and transactions which may prejudice the civil rights of persons in such service.

(Emphasis added.) Although this Court has previously indicated that "the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call," *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1946); *Boone v. Lightner*, 319 U.S. 561, 575 (1943), the statute must also be read as a whole and in context. *King v. St. Vincent's Hospital*, 112 S.Ct. 570 (1991). Several courts have had the opportunity to discuss the history and purpose of the Soldiers' and Sailors' Civil Relief Act. *See e.g., Pannell v. Continental Can Co., Inc.* 554 F.2d 216 (5th Cir. 1977); *King v. Zagorski*, 207 So.2d 61 (Fla. 1968); *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971). While the Act must be analyzed in terms of protection of the rights of those persons who have "dropped their affairs to answer their country's call," it must also be analyzed in terms of society's interest as a whole.

Many of the cases cited by the Petitioner which do not deal with real estate redemption allow the serviceman an opportunity to pursue or defend various causes of action, when his ability to pursue those claims had been hampered by his military service. In contrast, the question presented here is whether a career serviceman who has not been hampered by his military service may be protected by 50 U.S.C. App. § 525. A review of the objectives behind the Soldiers' and Sailors' Civil Relief Act as well as the case law discussing the real estate redemption

issue, compel this Court's determination that Col. Conroy should not benefit from 50 U.S.C. App. § 525 in absence of a showing of prejudice by his military service.

Col. Conroy initially joined the United States Army in 1962. (J.A. 3). He purchased his home in South Portland, Maine in 1964. (J.A. 7). In 1973, eleven years after his initial entry into the Army, Col. Conroy purchased vacant land in Danforth, Maine. (J.A. 4). Col. Conroy was aware of his obligation to pay Maine real estate taxes. (J.A. 7). Col. Conroy made no claim that he suffered prejudice as a result of his military service nor did he prove any prejudice at trial. (Pet. App. 40). Col. Conroy's payment of real estate taxes for his homes in South Portland, Maine and Wisconsin as well as his participation in the instant litigation during the pendency of his military career underscore the fact that his military service has not hampered his ability to tend to his personal affairs. As a result of Col. Conroy's failure to pay his Danforth, Maine real estate taxes in 1984, 1985 and 1986, the Town of Danforth, in compliance with Maine state law, foreclosed upon the property and sold the parcels to Respondents Aniskoff and Haynes. Respondent Haynes had no knowledge at the time he purchased the property that his predecessor in title was a serviceman. (J.A. 28). Respondents Aniskoff and Haynes were good faith purchasers for value who had no knowledge of Col. Conroy's status as a career serviceman.

A nearly identical case was presented to the Supreme Court of New Mexico in *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971). As in *Bailey*, Col. Conroy's contention distilled to its essence, is that regardless of all other factual and legal considerations, he must automatically prevail

by virtue of 50 U.S.C. App. § 525. In analyzing the relative positions of the parties, the Supreme Court of New Mexico recognized and properly disposed of the issue. The *Bailey* Court concluded that absent a showing of prejudice by the career military serviceman, a determination that 50 U.S.C. § 525 is an absolute bar would cause serious economic and practical problems in connection with real estate matters, which could not have been intended by Congress. The Court recognized that no real estate record in the county clerk's office would indicate the military status of a person whose title was otherwise extinguished by the deed to the state. The Court further recognized that a cloud on title as a result of the possibility of prior ownership by a career serviceman would have a dampening effect on land values, sales prices and the availability of credit where land is offered as security. *Bailey* at 728. These important economic and practical considerations must be recognized by this Court as well.

In *King v. Zagorski,* 207 So.2d 61 (Fla. App. 1968), the Court analyzed a case nearly identical to Col. Conroy's and concluded as follows:

> We do not believe that the Civil Relief Act was designed to cover such a situation. It could hardly have been intended to completely exempt a career serviceman owning property, who is knowledgeable about his tax obligations and is in no way handicapped because of military status, from paying the usual taxes assessed on his property. . . . He made no contention that he was under any economic stress or that he was physically handicapped or that he was personally removed from the area. He made no

> contention that he was in any manner whatsoever prejudiced in paying his taxes by being in the service. Basically and in layman's language, the Civil Relief Act was designed to protect from harassment and injury in connection with their civil affairs, those who usually in a state of current or impending military emergency, find themselves torn from their normal business activities back home, and, in military raiment, en route to some far off place such as Bastogna or Dak To or plain Hill 618 to do battle for their country. It was not aimed primarily as protection for the career military man; certainly it was not reasonably intended to provide a cloak of immunity to a property owner who, even though in military service, was in no way disadvantaged from the ordinary civilian in payment of his normal ad valorem taxes for the upkeep of government. We find no reported case where the Civil Relief Act has been sought to be applied to a state of facts such as exists here. . . . The conclusions irresistibly arise from a consideration of these two provisions: (1) that the Act was aimed mainly to protect the newcomer inducted into the military service, and (2) that the Act is bottomed upon the premise of 'hardship'.

King v. Zagorski at 64-65.

Those cases which have dealt with real estate taking outside the facts of *LeMaistre v. Leffers* (short-term soldier in war time) have attempted to balance the significant interests of the military and civilian populations with reference to stability in the conveyance of real estate. This issue is specifically addressed in the following cases and properly resolved: *King v. Zagorski,* 207 So.2d 61 (Fla.

1968) (denying a soldier redemption of property purchased sixteen (16) years earlier with no claim of ignorance or consequences under state law of non-payment of taxes); *Bailey v. Barranca,* 488 P.2d 725 (N.M. 1971) (denying retired soldier protection for failure to pay taxes on property purchased while a career soldier when he knew property was subject to tax and sale for non-payment); *see also Pannell v. Continental Can Co., Inc.,* 554 F.2d 216 (5th Cir. 1977) (career soldier of thirty-one years cannot benefit from Soldiers' and Sailors' Civil Relief Act in the absence of evidence of hardship associated with military service). These cases have all been resolved in favor of the integrity of the real estate system and the denial of special status to the military land owner simply because of his status in the military. If 50 U.S.C. App. § 525 provides an absolute bar and absolute protection to the serviceman, then title to any real estate owned by a serviceman would remain unresolved even for good faith purchasers for value who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment.

In weighing the various policy considerations involved here, the New Mexico Supreme Court discussed the effect of an absolute bar by Section 525. The Supreme Court of New Mexico noted that:

> The efforts of the legislature and the Courts to clothe tax titles with stature, security and validity have been valid for social and economic purposes. First, and most obviously, were such not the case, the State would be deprived of a significant source of revenue. Who would purchase such titles and how much would they pay were they not safe? Perhaps more important,

> owners of land purchased from the State Tax Commission by themselves or their predecessors in title would fear to develop or improve such property or devote it to its highest and best economic use if such titles were not secure.

Bailey at 727.

The legitimate state, social and economic goals would be absolutely frustrated if a career serviceman is permitted to utilize Section 525 to protect him from the economic responsibilities he has voluntarily taken on.

While a number of courts have had the opportunity to discuss various aspects of the Soldiers' and Sailors' Civil Relief Act and its relationship to the statute of limitations, the majority of those cases deal with issues dissimilar to the one brought before this Court and do not involve issues relating to redemption of real property. For example, in *Mouradian v. John Hancock Cos.,* 930 F.2d 972 (1st Cir. 1991), a serviceman sued his former employer for wrongful termination. In *dictum,* the First Circuit merely cited a law review article that opined that the "prevailing interpretation" of the Soldiers' and Sailors' Civil Relief Act required a tolling of limitations period during any period of military service. The decision did not discuss that proposition relative to real estate redemption actions. In *Mason v. Texaco, Inc.,* 862 F.2d 242 (10th Cir. 1988), the Tenth Circuit tolled the statute of limitations during military service and allowed a products liability, personal injury and wrongful death action to be brought by a serviceman following his discharge from the service. In *Ricard v. Birch,* 529 F.2d 214 (4th Cir. 1975), the Court tolled the statute of limitations and permitted a wrongful

death action brought by survivors against military persons following their discharge. The other cases cited by Petitioner are dissimilar and have no relevance to the question here: i.e., *Ray v. Porter,* 464 F.2d 452 (6th Cir. 1972) (personal injury action resulting from motor vehicle accident brought by a military service person); *Bickford v. United States,* 56 F.2d 636 (Ct. Cl. 1981) (military back pay and allowances).

Although Petitioner relies on *LeMaistre v. Leffers,* 333 U.S. 1 (1948), for the disposition of the question presented here, this Court's analysis in *LeMaistre* demonstrates that the facts presented in that case do not support Petitioner's argument. In addition, *LeMaistre* has limited application here since the facts are distinguishable and particularly since the United States was not at war during the period between 1983 and 1987, when Col. Conroy's property was sold for unpaid taxes. This Court did not address the application of the Soldiers' and Sailors' Civil Relief Act to a career serviceman (as Col. Conroy is) in the *LeMaistre* decision. In *LeMaistre,* this Court opined that a military serviceman had the benefit of the tolling of the statute of limitations as long as he was in active military service during a time of war. This Court specifically noted that "the Act must be read with an eye friendly to those who have dropped their affairs to answer their country's call." *LeMaistre* at 6. It is clear that in *LeMaistre* this Court sought to protect the interests of the serviceman during a brief period he served during a time of war. When this Court decided *LeMaistre,* it necessarily recognized that the issues of hardship and prejudice played their part. Those factors are not present here. Col. Conroy did not "[drop][his] affairs to answer [his]

country's call," but rather chose to acquire real estate in Danforth and South Portland, Maine as well as Wisconsin during his career with the United States Army. (J.A. 3, 4, 7, 9). Col. Conroy neither claimed nor suffered any hardship as the result of his career with the military. Absent of showing of hardship or prejudice, Col. Conroy may not take advantage of the protection afforded by 50 U.S.C. App. § 525.

CONCLUSION

For all the foregoing reasons, the decision of the Supreme Judicial Court of Maine should be affirmed.

Respectfully submitted,

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September, 1992

(9)

No. 91-1353

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

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REPLY BRIEF FOR PETITIONER

In his opening brief, petitioner demonstrated that Section 525 of the Soldiers' and Sailors' Civil Relief Act of 1940 (the "Relief Act"), as amended, 50 U.S.C. App. § 525, does not require military personnel to establish prejudice in order to toll the period for redemption of real property sold for nonpayment of taxes. As petitioner explained (Pet. Br. 9-15), Section 525, by its terms, contains no prejudice requirement, and other provisions of the statute -- some of which expressly condition relief on a showing of hardship -- confirm that Congress' failure to include such a requirement in Section 525 was deliberate. Petitioner also showed (Pet. Br. 15-24) that applying Section 525's plain language rationally serves Congress' statutory objectives, and that there is no legislative history indicating that Congress meant something other than what it said.

Respondents ignore virtually all of these arguments. They do not dispute that Section 525, by its terms, does not contain a prejudice requirement. They further do not dispute that, as other sections of the Relief Act demonstrate, Congress knew how to impose a prejudice requirement when it wanted to do so. In addition, respondents fail to marshal any legislative history to show that Congress did not mean what it said in Section 525. Finally, respondents do not challenge the legal proposition, relied upon by petitioner (Pet. Br. 16), that this Court may ignore the plain language of an unambiguous statute only in narrow and extraordinary circumstances. Instead, respondents advance three erroneous contentions.

First, respondents contend that the Relief Act is a wartime statute that has limited applicability to a "career" serviceman during peacetime (Resp. Br. 7-8). This argument ignores the fact that the Act was extended as a *peacetime* statute in 1948 without any change in the unambiguous language of Section 525 (*see* Pet. Br. 21; Brief of the United States as *Amicus Curiae* at 7, 26). Respondents seek support in Section 510 of the Relief Act, which refers to "emergent conditions" threatening the nation's peace (Resp. Br. 2, 7-8). But in quoting Section 510 in their brief, they inexplicably omit critical language, *i.e.*, that one purpose of the Relief Act is "to enable the United States the more successfully to fulfill the requirements of the national defense." 50 U.S.C. App. § 510. This purpose is clearly served by applying the plain language of Section 525. Furthermore, while respondents indicate (Resp. Br. 8) that Section 510 refers to a "temporary suspension of legal proceedings," this language simply underscores that the protections of the Relief Act apply only to the period of military service. *See* 50 U.S.C. App. § 511(2) (defining period of military service).

Second, citing *King v. St. Vincent's Hospital*, 112 S. Ct. 570, 574 (1991), respondents urge the Court to focus on the "context" of Section 525 by taking into account "policy considerations" (Resp. Br. 6, 7, 8, 12). But the Court in *King*

hardly intended that judges should ignore a statute's language. Indeed, the Court in *King* adhered to the plain language of the statute at issue even though it indicated that it might have reached a different result on policy grounds had it been a legislative body. *Id.* at 573. In referring to "context," the Court was simply noting that it could confirm one section's plain language by looking at other sections of the same act, *see King*, 112 S. Ct. at 574, the very analysis that petitioner undertook in his opening brief (Pet. Br. 12-15). *King* thus provides strong support for *petitioner's* contentions (*see* Pet. Br. 17-18), and adds nothing to respondents' effort to abandon rules of construction in favor of their own view of public policy.

Third, respondents suggest (Resp. Br. 12) that a plain reading of Section 525 could threaten "the integrity of the real estate system." Specifically, they express concern that "title to any real estate owned by a serviceman would remain unresolved even for good faith purchasers for value who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment" (Resp. Br. 12). Of course, respondents' attempt to resort to equitable arguments is undermined by their own admission (Resp. Br. 5) that the properties at issue were conveyed by mere quitclaim deeds. In any event, respondents cite no evidence that Section 525 has in fact had any adverse effect on the real estate system. Significantly, no banking or real estate trade association -- or anyone, for that matter -- has filed an amicus brief echoing respondents' fears. Congress was evidently correct in believing that military personnel would not deliberately disregard their financial obligations (*see* Pet. Br. 20).[1]

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[1]Respondents simply ignore petitioner's point (Pet. Br. 20) that, because of interest charges, a service member generally would have little financial incentive for deliberately withholding his real estate taxes. A service member, moreover, could seriously damage his credit rating by not paying real estate taxes.

At bottom, respondents are asking this Court to engage in the legislative function of balancing "[t]he interests of military personnel" against "the interests of society as a whole" (Resp. Br. 6). This is something that the Court cannot do: when a statute is clear, the Court must "put aside" its "appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress" and must apply the law as written. *TVA v. Hill*, 437 U.S. 153, 194 (1978). The concerns raised by respondents should be addressed to Congress, not the courts.

For the foregoing reasons and those stated in petitioner's opening brief, the decision of the Supreme Judicial Court of Maine should be reversed.

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October, 1992

No. 91-1353

In the Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY, PETITIONER

v.

WALTER S. ANISKOFF, JR., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, excludes a service member's period of military service after October 6, 1942, from the computation of "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The question presented is whether a service member may invoke the protections of Section 525 without showing that his military service prejudiced his ability to redeem his property within the period otherwise prescribed by state law.

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INTEREST OF THE UNITED STATES

The state court in this case held that, absent a showing of prejudice, members of the United States Armed Services may not invoke Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), 50 U.S.C. App. 525, which in relevant part tolls the period of redemption for real property sold or forfeited for nonpayment of taxes. The United States has a substantial interest in assuring that those who serve the Nation in the military services receive the full measure of protection from civil process that Congress has provided by law. At the Court's invitation, the United States filed a brief amicus curiae at the petition stage of this case.

STATUTORY PROVISION INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

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[1] On March 18, 1991, Congress amended 50 U.S.C. App. 525 to replace a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present reference to "October 6, 1942." Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. That technical amendment does not affect the question presented in this case. Several other provisions of the SSCRA were also amended in 1991 in respects not material here. For purposes of convenience, we refer to the presently effective version of the SSCRA, to be codified in 50 U.S.C. App. Parallel citations to the statutes at large are listed in the Table of Authorities to this brief for the provisions amended in 1991.

STATEMENT

1. Petitioner, a Colonel in the United States Army, has been on continuous active duty with the Army since November 26, 1966. During that time, he has been stationed in four foreign countries and several duty stations in the United States. While stationed in Massachusetts in 1973, petitioner purchased some real estate in Danforth, Maine. Petitioner paid all local real estate taxes on the property until 1984, but he did not do so in 1984, 1985, or 1986.[2] Although the town sent petitioner tax notices. they were returned as "undeliverable as addressed and unable to forward." Pet. App. 24-28.

By operation of Maine law, a lien against real estate arises to secure the payment of taxes legally assessed against the property. Me. Rev. Stat. Ann. tit. 36, § 552 (West 1990). After a specified period, the tax collector may send the taxpayer a notice of lien and a demand for payment. Me. Rev. Stat. Ann. tit. 36, § 942 (West 1990). If taxes remain unpaid after an additional 30 days, the tax collector records a "tax lien certificate" in the county registry of deeds. *Ibid.* Recordation of the certificate creates a tax lien mortgage, and the taxpayer has an 18-month period of redemption in which to pay the mortgage, plus interest and costs. Me. Rev. Stat. tit. 36, § 943 (West 1990). If the taxpayer does not do so within the prescribed period, the mortgage is deemed foreclosed after notice to the taxpayer. *Ibid.*

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[2] Petitioner testified that he never received tax bills for those years, that he sent the municipality correspondence in 1985 concerning his 1984 and 1985 bills, and that he ceased to pursue the matter when he received no response before he moved overseas the next year. Pet. App. 26-27.

Here, the town sent petitioner notices of the tax liens and of the impending foreclosure of those liens, but the notices were returned as undeliverable. After the automatic foreclosure, the town sold petitioners' properties to respondents Walter S. Aniskoff, Jr., and H.C. Haynes, Inc., in December 1986. Pet. App. 27-28.

2. Petitioner brought this quiet title action against the town and the two purchasers in the Maine Superior Court. At trial, the parties stipulated:

> [A]ll statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and * * * were it not for the Soldiers and Sailors Civil Relief Act [*sic*], the Town title would have been perfected in this particular instance.

Pet. App. 28-29. Noting that 50 U.S.C. App. 525 tolls statutory redemption periods for any "period of military service," petitioner argued that the town did not acquire valid title to his property because he had been in military service throughout the relevant period. The superior court rejected that contention. Pet. App. 29-41.

The trial court acknowledged decisions holding that under 50 U.S.C. App. 525 any period of military service tolls any period of limitations and explained that those decisions were based on the principle that a court should apply the plain meaning of a clearly worded statute. Pet. App. 32-33. The court, however, also noted that some courts had concluded that a career service member may invoke Section 525 only if he can show that his military service resulted in hardship excusing timely legal action. Pet. App. 33-34.

Those courts, the court observed, had rejected the contrary rule—requiring no showing of hardship by career service members—as "absurd and illogical." *Id.* at 34.

The superior court followed the line of cases requiring a showing of hardship. The court found reading such a requirement into the statute necessary "to avoid absurd, unreasonable or illogical results." Pet. App. 36. If a career officer did not have to demonstrate prejudice, the court reasoned, he could purchase real estate, ignore his tax obligations for a lengthy period, and reclaim the property at the end of his military service. *Id.* at 37-39. Finding that petitioner was a career service member who had not alleged any hardship, the court denied him relief under Section 525. Pet. App. 40.

3. The Maine Supreme Judicial Court affirmed by an evenly divided court. Pet. App. 42-45.

SUMMARY OF ARGUMENT

The state courts' decision requiring a career service member to show hardship before invoking the redemption provision of 50 U.S.C. App. 525 is contrary to the unambiguous language of the statute. Section 525 unequivocally provides that "any part of [a] period [of military service] which occurs after October 6, 1942," is to be excluded from "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." It draws no distinction between career and noncareer service members, and imposes no requirement that a service member show service-related hardship. Because numerous other provisions of the SSCRA explicitly require a showing of service-

related hardship as a condition of relief, the omission of any such requirement from Section 525 must be regarded as deliberate.

Despite the clarity of the SSCRA's language, the state court imposed a hardship requirement under Section 525, in part because service members may otherwise decline to pay property taxes during their entire military service and then redeem their property at the conclusion of their service. The court's reasoning, however, not only conflicts with this Court's decision in *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570 (1991), but disregards the plain terms of an Act of Congress based on the speculative concern that some of its beneficiaries will abuse the rights Congress has afforded them. Finally, although some lower courts have discerned support in the SSCRA's legislative history for the view that prejudice is required under Section 525, see, *e.g.*, *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 66 (Fla. Dist. Ct. App. 1968), the unambiguous text of Section 525 renders legislative history irrelevant. See, *e.g.*, *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 808-809 n.3 (1989). In any case, the Act's legislative history does not contradict the statute's plain terms.

ARGUMENT

THE PLAIN LANGUAGE OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 UNQUALIFIEDLY TOLLS THE PERIOD FOR REDEEMING REAL PROPERTY SOLD OR FORFEITED FOR UNPAID TAXES DURING THE PERIOD OF MILITARY SERVICE AND CONTAINS NO REQUIREMENT THAT A SERVICE MEMBER DEMONSTRATE HARDSHIP ARISING FROM THAT SERVICE

Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), ch. 888, § 100, 54 Stat. 1179, "to provide for, strengthen, and expedite the national defense" and "to enable the United States the more successfully to fulfill the requirements of the national defense." 50 U.S.C. App. 510.[3] The SSCRA achieves its objective by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." *Ibid.* Although the immediate rationale for enacting the SSCRA in 1940 was to address "the emergent conditions which [were] threatening the peace and security of the United States," *ibid.*, and the Act was originally intended to be of limited duration, SSCRA, § 604, 54 Stat. 1191, Congress later extended its protections indefinitely. Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623-624.

The provision at issue here, 50 U.S.C. App. 525, tolls periods of limitations and redemption during a service member's military service. The broad and un-

[3] The 1940 legislation is a "substantial reenactment," *Boone* v. *Lightner*, 319 U.S. 561, 565 (1943), of a similar statute adopted during World War I, see Soldiers' and Sailors' Civil Relief Act of 1918, ch. 20, 40 Stat. 440.

conditional language of Section 525 mandates that "[t]he period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service." 50 U.S.C. App. 525. Of specific pertinence here, Section 525 also provides: "[N]or shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." *Ibid.*[4]

The SSCRA, moreover, explicitly defines both the type and the duration of military service that qualifies for protection. The category of "person[s] in the military service" encompasses "[a]ll members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy." 50 U.S.C. App. 511(1). And the statute defines "period of military service" to "mean[], in the case of any person, the period beginning on the date on which the person enters active service and

[4] The portion of Section 525 pertaining to redemption periods was enacted in 1942. See Soldiers' and Sailors' Civil Relief Act Amendments of 1942, ch. 581, § 5, 56 Stat. 770-771. In *Ebert* v. *Poston*, 266 U.S. 548, 553 (1925), this Court had held that an analogous tolling provision in the previous SSCRA did not apply to rights of redemption, and Congress amended the 1940 statute to overcome the effect of that interpretation. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 3 (1942).

ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force." 50 U.S.C. App. 511(2).[5] Thus, the Act specifies with precision the coverage and duration of the tolling provisions codified at Section 525.

A. The Tolling Provisions of 50 U.S.C. App. 525 Operate Exclusively by Reference to the "Period of Military Service"

As this Court has often stated, "[i]nterpretation of a statute must begin with the statute's language." *Mallard* v. *United States Dist. Court*, 490 U.S. 296, 300 (1989); see, *e.g.*, *Hallstrom* v. *Tillamook County*, 493 U.S. 20, 25 (1989); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). And where "the statute's language is plain,

[5] Prior to the 1991 amendments to the SSCRA, the statute provided:

> The term "period of military service", as used in this Act [said sections], shall include the time between the following dates: For persons in active service at the date of the approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

50 U.S.C. App. 511(2) (1988). Because petitioner entered active service well after the approval of the SSCRA, the omission of the transitional provisions relating to the 1940 enactment of the SSCRA has no effect on this lawsuit. For simplicity, we refer to the presently effective version of Section 511(2).

'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)); accord *Connecticut Nat'l Bank* v. *Germain*, 112 S. Ct. 1146, 1149 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. * * * When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"). The plain language of Section 525 requires no showing of prejudice or hardship by any service member. Rather, it flatly excludes "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" provided for the redemption of real estate sold or forfeited to pay property taxes. Thus, under the clear terms of Section 525, "[t]he only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service." *Ricard* v. *Birch*, 529 F.2d 214, 217 (4th Cir. 1975); accord *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981).[6]

1. *50 U.S.C. App. 525 Draws No Distinction Between Career and Noncareer Service Members*

The state court held that petitioner was required to make a showing of hardship before invoking Section 525, because he is "a career military serviceman." Pet. App. 40. The SSCRA, however, "draws no distinction" among "different categories of active duty personnel." *Bickford*, 656 F.2d at 639. Rather, Section 525 on its face applies equally to "*any* person in military service," a category into which Section 511(1) places "[*a*]*ll* members" of the Armed Forces, regardless of whether they intend to make a career of military service (emphasis added). Indeed, far from defining distinct categories of service members, the SSCRA does not remotely suggest any criteria for deciding who would be a career, rather than noncareer, service member for purposes of Section 525. It is unlikely that Congress, in enacting so detailed a statute, would have created two wholly unmentioned classes of service members eligible for distinct tolling rights without specifying, or even suggesting, any basis for identifying the members of each category.

Some courts have cited length of service as a factor to consider in determining a service member's "career" status. See, *e.g.*, *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977) (31 years); *King* v. *Zagorski*, 207 So. 2d 61, 62, 64 (Fla. Dist. Ct. App. 1968) (20 years). None of those cases, however, has cited any provision of the SSCRA that indicates how or where to draw the line between "career" and "noncareer" service members based on the length of their service. Rather, in the absence of any statutory guidance, courts making such determinations are able to consult only their own impressionistic judgment that a particular member's service has been, or is likely to be, of sufficient duration to qualify him as a "career" service member. Such ad hoc determinations are hardly consistent with the broad and carefully drawn statutory language that applies Sec-

[6] Although *Ricard* and *Bickford* involved periods of limitation, and not periods of redemption, their reasoning applies with no less force to the part of Section 525 dealing with redemption. Section 525 generally excludes "[t]he period of military service" from any limitations period, but also excludes "any part of such period [of military service] which occurs after October 6, 1942," from periods of redemption.

tion 525 without qualification to "any person in military service."

Nor is it tenable to suggest, as some courts have, see, *e.g.*, *Pannell*, 554 F.2d at 225; *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971), that Section 525's availability turns on the member's status as a conscript, rather than a volunteer. To be sure, the SSCRA was enacted in 1940 to deal with the "emergent conditions which [were] threatening the peace and security of the United States," and Congress contemplated that it would be of limited duration. SSCRA, §§ 100, 605, 54 Stat. 1179, 1191. But the language of the SSCRA does not differentiate between conscripts and volunteers. Moreover, Congress's reenactment of the SSCRA in 1940 occurred soon after it enacted the Selective Training and Service Act of 1940, ch. 720, § 13, 54 Stat. 895-896, which extended certain provisions of the World War I version of the SSCRA to persons inducted through the selective service. Part of the impetus for enacting the SSCRA in 1940 was to extend civil relief to military volunteers, S. Rep. No. 2109, 76th Cong., 3d Sess. 1 (1940); see also H.R. Rep. No. 3001, 76th Cong., 3d Sess. 4 (1940), and it was broadly worded to cover "[a]ll members" of the Armed Forces.[7] SSCRA, § 101(1), 54 Stat. 1179. Given Congress's evident purpose of extending civil relief to military volunteers, it should not lightly be inferred that Congress silently chose to extend less protection to volun-

[7] Because of the comprehensive coverage of the SSCRA of 1940, it became unnecessary to retain the civil relief provision of the Selective Training and Service Act of 1940; thus, Congress made that provision inapplicable to military service occurring after the effective date of the SSCRA. See SSCRA, § 605, 54 Stat. 1191.

teers than to conscripts without expressing any intent to do so in the text of the SSCRA (or even in its legislative history).

In any case, while Congress initially contemplated that the SSCRA would be a wartime measure, it subsequently extended the Act's duration indefinitely. See Selective Service Act of 1948, § 14, 62 Stat. 623-624.[8] It is therefore now unmistakably clear that the Act's protections are fully intended for service members who serve the Nation other than in periods of emergency or war. And given the present all-volunteer character of the Armed Forces, a statutory distinction turning on conscription, as opposed to voluntary enlistment, is meaningless. In particular, there is no reason to think that Congress, which has traditionally sought to attract volunteers and to encourage reenlistments,[9] meant to treat either of those

[8] Under Section 604 of the SSCRA (54 Stat. 1191) the Act was to remain in effect either until May 15, 1945, or until the war was "terminated by a treaty of peace proclaimed by the President and for six months thereafter." In a joint resolution passed in 1947, Congress declared that with respect to the provisions of the SSCRA pertaining to insurance (50 U.S.C. App. 540-548), "the present war shall be deemed to have terminated within the meaning of section 604 * * * of the [SSCRA], as of the effective date of this joint resolution." Act of July 25, 1947, ch. 327, § 4, 61 Stat. 454. The next year, however, Congress provided in Section 14 of the Selective Service Act of 1948 (62 Stat. 623) that notwithstanding the provisions of Section 604 of the SSCRA or Section 4 of the 1947 joint resolution, "all of the provisions of the [SSCRA] of 1940, as amended, * * * shall be applicable to all persons in the armed forces of the United States * * * until such time as the [SSCRA] of 1940, as amended, is repealed or otherwise terminated by subsequent Act of the Congress."

[9] For examples of statutes authorizing payment of enlistment or reenlistment bonuses, see, *e.g.*, Act of Mar. 3, 1791,

categories of service members less favorably than others under Section 525.

2. *The Plain Language and Structure of the SSCRA Make Clear That a Showing of Prejudice Is Not Required Under Section 525*

Contrary to the decision of the state court, the language and structure of the SSCRA leave no doubt that a service member may invoke the protections of 50 U.S.C. App. 525, without showing any hardship arising from his military service. Not only does Section 525 unconditionally exclude "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" of redemption,[10] but it stands in marked contrast to other provisions of the Act that expressly condition available relief on prejudice arising from military service. For example, a court may stay "any action or proceeding in any court in which a person in military service is involved,

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ch. 28, § 4, 1 Stat. 222; Act of Mar. 3, 1795, ch. 44, § 6, 1 Stat. 430; Act of July 5, 1838, ch. 162, § 29, 5 Stat. 260; Act of Mar. 3, 1899, ch. 413, § 16, 30 Stat. 1008; National Defense Act Amendments of 1920, ch. 227, § 27, 41 Stat. 775; Act of June 10, 1922, ch. 212, §§ 9-10, 42 Stat. 629-630; Pay Readjustment Act of 1942, ch. 413, § 10, 56 Stat. 364; National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. No. 100-180, § 626, 101 Stat. 1104 (1987) (extending authorization for certain bonuses). In addition, Congress provides educational assistance based upon military service, in part, as a means of making such service more attractive. See, *e.g.*, 38 U.S.C. 1401(4), 1601.

[10] See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 245 (10th Cir. 1988) (Section 525's terms are "clear and unambiguous"); *Bickford*, 656 F.2d at 639 (statute's "express terms" make tolling "unconditional"); *Ricard*, 529 F.2d at 217 (tolling statute is "unconditional").

either as plaintiff or defendant, * * * as provided in this Act * * * unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service." 50 U.S.C. App. 521. A similar qualification appears in many other provisions of the SSCRA relating to diverse forms of civil relief.[11] The absence of any similar

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[11] See 50 U.S.C. App. 520(4) (court may reopen judgment entered against absent service member if "it appears that such person was prejudiced by reason of his military service in making his defense thereto"); 50 U.S.C. App. 523 (court may enter stay of judgment, attachment, or garnishment against service member, "unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service"); 50 U.S.C. App. 526 (limiting interest rate on obligations incurred before entry into military service unless service member's ability to pay "is not materially affected by reason of such service"); 50 U.S.C. App. 530(b) (allowing stay of eviction or distress proceedings against military dependents unless tenant's ability to pay rent "is not materially affected by reason of such military service"); 50 U.S.C. App. 531(3) (allowing stay of proceedings to terminate installment contract unless "the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service"); 50 U.S.C. App. 532(2) (stay of enforcement of secured obligations, unless "the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(1) (limiting right of assignee of insurance policy to exercise any right or option under the policy, unless "the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(2) (limiting right to foreclose or enforce lien for storage of personal property unless "the ability of the defendant to pay

qualification upon the tolling of redemption under Section 525 indicates that Congress did not intend to qualify the availability of that relief. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."); see also *Bickford*, 656 F.2d at 639-640 ("When Congress intended to impose conditions on the applicability of other provisions in the SSCRA * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.").

Other parts of the Act confirm that conclusion. The SSCRA deals directly with the collection of unpaid taxes and assessments on "real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his depend-

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the storage charges due is not materially affected by reason of his military service").

In addition, the National Labor Relations Act establishes a six-month limitations period for filing an unfair labor practice charge, unless the aggrieved person "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." 29 U.S.C. 160(b). That provision confirms that when Congress intends to toll a statute of limitations based on the prejudicial effect of military service on a service member's ability to bring an action, it does so explicitly.

ents or employees." 50 U.S.C. App. 560(1).[12] The Act provides that such property may not be sold to collect unpaid taxes or assessments except by leave of court, and that collection proceedings may be stayed until six months after the termination of military service—"unless * * * the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service." 50 U.S.C. App. 560(2). When such property is sold for back taxes or assessments, however, the SSCRA provides, without qualification, that a service member "shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." 50 U.S.C. App. 560(3). Thus, two provisions appearing side-by-side in Section 560 of the SSCRA differ as to whether prejudice is required; the subsection dealing with collection proceedings requires consideration of prejudice while the adjacent subsection dealing with the right of redemption pointedly omits such a requirement. This is powerful confirmation that Congress intended to make the right of redemption unqualified in the SSCRA.

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[12] The state court did not consider, and petitioner does not rely on, that provision in this case. Petitioner does not suggest that he or his dependents ever used the property in question for "dwelling, professional, business, or agricultural purposes," as required by Section 560. As this Court has noted, however, the fact that property is not within the ambit of Section 560 does not affect the applicability of Section 525. *Le Maistre* v. *Leffers*, 333 U.S. 1, 5 (1948). The two provisions supplement each other; Section 560 provides protections relating to both forced sale and redemption of the specified kinds of property, whereas Section 525 applies generally to all property but protects only against the expiration of the right of redemption. 333 U.S. at 5-6.

In addition, the inference that Congress purposefully omitted a prejudice requirement from the redemption provision is generally reinforced by the carefully detailed nature of the SSCRA's remedial scheme. As this Court stated regarding the substantially similar World War I version of the SSCRA:

> This Act is so carefully drawn as to leave little room for conjecture. It deals with a single subject and does so comprehensively, systematically, and in detail. * * * To ensure certainty, separate provision is made for each of the several classes of transactions to be dealt with and for the situations likely to arise in each. * * * Such care and particularity in treatment preclude expansion of the Act in order to include transactions supposed to be within its spirit, but which do not fall within any of its provisions.

Ebert v. *Poston*, 266 U.S. 548, 554 (1925). Although the Court made that observation in rejecting a remedy found nowhere in the text of the statute,[13] there is no reason to conclude that the "care and particularity" with which the SSCRA is drawn leaves any greater room for implying restrictions on relief that are nowhere in the statutory text.

Indeed, there is even less basis for implying nonstatutory restrictions on relief, because the SSCRA must be liberally construed in favor of service members. See *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948). In *Le Maistre*, this Court rejected a "technical reading" of Section 525 that would have limited the tolling

[13] The Court declined to authorize relief for a service member whose mortgage had been foreclosed prior to the enactment of the SSCRA in 1918, when neither the foreclosure stay provision nor the tolling provision (as then drafted) provided for the requested relief. 266 U.S. at 552-555.

of periods of redemption to cases in which a purchaser obtained title to forfeited land prior to the period of redemption. 333 U.S. at 4. The Court reasoned that Section 525's language "does not compel the narrow reading that is suggested," and that "the spirit of the amendment [covering redemption periods] repels any such restriction." 333 U.S. at 4. The Court added that "the Act must be read with an eye friendly to those who [have] dropped their affairs to answer their country's call." *Id.* at 6. Thus, even if the SSCRA were unclear regarding a requirement of prejudice under Section 525, any ambiguity would have to be resolved in favor of the service member. See *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570, 574 n.9 (1991) (reaffirming interpretive "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor").[14]

[14] The state court in this case suggested that the pertinent canon applies only when an individual is called to temporary service during time of war, see Pet. App. 36, but *King* applied it in the case of a National Guard member who voluntarily assumed a three-year tour of active duty in peace time. 112 S. Ct. at 571-572. Although *King* arose under the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2021 *et seq.*, it articulated the canon in general terms not limited to that particular statute. Moreover, the decision upon which *King* relied (112 S. Ct. 574 n.9) in applying the canon, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (construing VRRA's predecessor statute), relied in turn upon *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943), a case arising under the SSCRA.

B. The State Court Erred in Imposing a Service-Connected Hardship Requirement under Section 525 to Avoid "Absurd, Unreasonable, or Illogical" Results

Even though Section 525's plain language requires no showing of prejudice, and the structure of the SSCRA confirms that Congress acted deliberately in omitting such a requirement, the state court in this case concluded that a requirement of prejudice for a career service member seeking to toll a period of redemption is necessary to avoid "absurd, unreasonable, or illogical results." Pet. App. 36. In so holding, the court relied (Pet. App. 36-39) on lower court decisions holding that Congress could not have intended the practical consequences of a contrary rule—namely, that a career service member could sow uncertainty in land titles by not paying real estate taxes, while retaining an unqualified right of redemption, during the entire period of his military service. See *Bailey* v. *Barranca*, 488 P.2d 725, 729-730 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968).[15] But that policy-based argument cannot legitimately override the plain meaning of the statute.

Indeed, the reasoning of *Bailey* and *Zagorski* directly conflicts with that of this Court's recent decision in *King* v. *St. Vincent's Hosp.*, *supra*. At issue

[15] The state court also quoted (Pet. App. 39-40) *McCance* v. *Lindau*, 492 A.2d 1352, 1357 (Md. Ct. Spec. App. 1985), for its assertion "that absurd results may ensue" from a literal application of Section 525, because "a career military serviceman could for any reason or no reason at all wait 30 years or more before filing a law suit." *McCance*, however, recognized that any such uncertainty "was placed there by Congress," and that "it is for Congress" to remove it. 492 A.2d at 1357.

there was a provision of the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2024(d), requiring employers to give reservists "a leave of absence" for training, and assuring the returning employee "such seniority, status, pay, and vacation" as he would have had without the absence. The service member in *King* sought a three-year leave of absence, but his employer rejected it. Although the plain language of Section 2024(d) was unqualified in granting a right of leave, the court of appeals read a reasonableness requirement into the statute's guarantee of leave time; to do otherwise, the court of appeals concluded, would cause "absurd, unjust, or unintended" results. *St. Vincent's Hosp.* v. *King*, 901 F.2d 1068, 1071-1072 (11th Cir. 1990).

This Court reversed, reasoning that the language of Section 2024(d) is "unequivocal and unqualified" and "does not address the 'reasonableness' of a reservist's leave request." *King*, 112 S. Ct. at 573. Although acknowledging the force of the argument that a literal reading of Section 2024(d) would create serious practical difficulties, the Court determined that "to grant all this is not to find equivocation in the statute's silence, so as to render it susceptible to interpretive choice." 112 S. Ct. at 573. In particular, the Court observed that, unlike Section 2024(d), certain other provisions of the VRRA "expressly limit" the duration of reemployment rights. 112 S. Ct. at 573. In view of "the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions," the Court inferred that "the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." 112 S. Ct. at 574. Finally, the Court stated that even if there were am-

biguity in the statute, it would have to be resolved in favor of the service member "under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Id.* at 574 n.9.

The same analysis applies with remarkable similarity to the redemption provision of Section 525. The language of that provision is "unequivocal and unambiguous"; it contains no requirement of prejudice; it is surrounded by other sections of the SSCRA that "expressly limit" available civil relief with "affirmative" requirements of prejudice; and it arises in the context of a statute that must be liberally construed in favor of the service member. Whatever policy concerns may arise from an unqualified tolling of the period of redemption during the period of military service, the courts "must deal with the law as it is." *Monroe* v. *Standard Oil Co.*, 452 U.S. 549, 565 (1981).[16] By adding a requirement of prejudice to Section 525, the state court restruck the statutory balance in a manner inconsistent with the plain language selected by Congress in the SSCRA.

In any case, we disagree with the suggestion of *Bailey* and *Zagorski* that adhering to the plain language of the SSCRA presents a material risk that career service members will abuse Section 525. Nothing in the SSCRA prohibits state or local governments from charging service members interest on back taxes, and the continued nonpayment of taxes therefore carries a clear economic cost. To be sure, the

[16] This is especially so, moreover, under a statute governing the Nation's military affairs. Cf. *Rostker* v. *Goldberg*, 453 U.S. 57, 64-66 (1981) (noting the great deference owed to Congress in matters of national defense and military affairs).

SSCRA limits the rate of interest that may be charged on unpaid taxes or assessments on specified types of property,[17] making it theoretically possible for a service member to invest sums withheld from property taxes at a higher rate of interest than he is charged on his back taxes. In practice, however, such a course of deliberate tax delinquency is unlikely, because it would carry with it the considerable cost of harming the service member's credit rating generally (and the taxability of interest income would mitigate any advantage). Thus, even if there could be a proper basis for departing from Section 525's plain terms on policy grounds, but see *King* v. *St. Vincent's Hosp.*, *supra*, the speculative possibility that some service members might abuse the tolling provisions of Section 525 would not provide a sufficient reason to do so.[18]

[17] Where unpaid taxes or assessments arise from "personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes," 50 U.S.C. App. 560(1), the Act provides that the amount due "shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment." 50 U.S.C. App. 560(4). In general, moreover, for liabilities incurred prior to a service member's military service, the SSCRA limits interest to six percent unless a court finds, upon application of the obligee, that the member's ability to pay a higher rate is "not materially affected" by his military service. 50 U.S.C. App. 526. Those limitations do not apply in this case. Petitioner has not suggested that the property at issue falls within any of the categories covered by Section 560. See note 12, *supra*. Section 526 also is inapposite, because petitioner entered military service in 1966—well before he incurred the relevant tax liability during the 1980s. See Pet. App. 25-27.

[18] We note, moreover, that uncertainty in real estate titles is inevitable with respect to any provision that tolls periods of

C. The Legislative History Does Not Contradict the Plain Language of Section 525

In imposing a service-related prejudice requirement under Section 525, some lower courts have relied on legislative history indicating that the SSCRA was enacted primarily as a wartime measure and directed at the exigencies arising from military service. See, *e.g.*, *Bailey*, 488 P.2d at 728-729; *Zagorski*, 207 So. 2d at 65. For two reasons, however, reliance on the legislative history of the SSCRA is misplaced. First, as this Court has clearly stated, "[l]egislative history is irrelevant to the interpretation of an unambiguous statute." *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 808-809 n.3 (1989). Although "a court appropriately may refer to a statute's legislative history to resolve statutory ambiguity, there is no need to do so" where the statutory text "is not unclear." *Toibb* v. *Radloff*, 111 S. Ct. 2197, 2200 (1991); accord *Rou Pair Enter.*, 489 U.S. at 241 ("The language before us expresses Congress' intent * * * with sufficient precision so that reference to legislative history * * * is hardly necessary."). Because the language of Section 525, particularly when viewed in the context of the SSCRA as a whole, leaves no ambiguity in its omission of a prejudice requirement, there is no need to repair to the legislative history.

Second, that history in any event does not contradict the plain meaning of the statute. To be sure, the legislative history accompanying the 1918 enact-

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redemption. Even if a service member were required to show service-related hardship before invoking Section 525, a purchaser of real estate with a tax title in the chain of title would still face the possibility that there is an outstanding right of redemption that is not reflected in the records.

ment of the SSCRA indicates that "[i]nstead of a rigid suspension of all actions against a soldier, a restriction on suits is placed only where a court is satisfied that the absence of the defendant in military service has materially impaired his ability to meet that particular obligation." H.R. Rep. No. 181, 65th Cong., 1st Sess. 2 (1917). However, as we have shown, where Congress intended to give effect to that principle in the SSCRA, it did so expressly. See pp. 14-17, *supra*. So it is that most provisions of the SSCRA explicitly condition civil relief upon the existence of hardship arising from military service; but that is not so here. No such requirement was incorporated into the tolling provisions of the Act. See *Bickford*, 656 F.2d at 639-640.[19]

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[19] In addition, other portions of the legislative history of the 1918 statute confirm that the tolling provision now codified at 50 U.S.C. App. 525 reflects a deliberate departure from the general approach of the SSCRA. For example, while the legislative history generally contrasts the proposed legislation with the more rigid stay laws enacted by the States during the Civil War, see, *e.g.*, H.R. Rep. No. 181, *supra*, at 2, there is evidence that the tolling provision was specifically drafted to approximate the Civil War statutes. Thus, the government's memorandum transmitting the SSCRA to the Senate explained the tolling provision as follows:

> A provision to this effect is familiar in the war legislation of almost every American State at the time of the Civil War. The section here drafted seeks to express in the fewest possible words the various benefits which the old war legislation created in this regard.

Memoranda on S. 2589 Before the Subcomm. of the Senate Comm. on the Judiciary, 65th Cong., 1st Sess. 30 (1917); see H.R. Rep. No. 181, *supra*, at 6 (the tolling provision "provides the usual stay of the statute of limitation"). Consistent with that view, moreover, the House sponsor of the 1918 bill made clear that the SSCRA would "suspend entirely" the

The legislative history of the 1940 enactment also provides no basis for departing from the statutory language. As some courts have noted, see, *e.g.*, *Bailey*, 488 P.2d at 728; *Zagorski*, 207 So. 2d at 65, the legislative history surrounding the 1940 reenactment of the SSCRA reflects a primary purpose of addressing the urgent conditions that might arise if individuals were called to serve in the impending war. But "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history," *Pittston Coal Group, Inc.* v. *Sebben*, 488 U.S. 105, 115 (1988), and the plain terms of Section 525 contain no suggestion that available relief is conditioned upon the existence of hostilities. Indeed, Congress's indefinite extension of the SSCRA in 1948, see Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623-624, leaves no doubt that the Act encompasses more than merely the protection of service members called to fight during a war. Accordingly, nothing in the legislative history of the SSCRA is inconsistent with applying the Act's plain language.[20]

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statute of limitations "during [the service member's] period of service." 55 Cong. Rec. 7788 (1917) (Rep. Webb).

[20] The legislative history of the 1942 amendment extending Section 525 to periods of redemption similarly contains no suggestion of a prejudice requirement. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942) ("The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period [of military service] which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942) (same); see also 88 Cong. Rec. 5367 (1942) (Rep. Kilday) ("You take the period of redemption that exists in most cases for the property owner after tax foreclosure, for instance. We provide in this amendment that the period he is in the Army shall not count within the period of redemption, so that we place him whole while he is in the Army.").

* * * * *

In sum, we agree with the reasoning of the lower courts that have interpreted Section 525 according to its plain language and declined to engraft a prejudice requirement nowhere found in the text of that provision. See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 244-245 (10th Cir. 1988); *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981); *Ricard* v. *Birch*, 529 F.2d 214, 216-217 (4th Cir. 1975); *Ray* v. *Porter*, 464 F.2d 452, 454-456 (6th Cir. 1972); *Jones* v. *Garrett*, 386 P.2d 194, 200 (Kan. 1963);[21] see also *Illinois Nat'l Bank* v. *Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945) ("It is evident that the provisions of [Section 525] * * * are self-executing, and that it was not the intention of Congress to make it discretionary with the court whether, under the facts of the particular case, an extension of time for redemption should be had."). As one court of appeals succinctly explained:

> There is not ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA

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[21] Respondent would distinguish those cases as involving periods of limitation, rather than periods of redemption. Br. in Opp. 4-5. The text of Section 525, however, is certainly no less unconditional with respect to periods of redemption. Section 525 excludes "[t]he period of military service" from any period of limitation, and also excludes "any part of such period [of military service] which occurs after October 6, 1942," from "any period" of redemption.

> * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.

Bickford, 656 F.2d at 639-640.[22] Because of the clarity of the SSCRA's language, the state court's imposition of a prejudice requirement under Section 525 "is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted * * * may be included within its scope." *Iselin* v. *United States*, 270 U.S. 245, 251 (1926) (Brandeis, J.). "To supply omissions," however, "transcends the judicial function." *Ibid.* Because petitioner has remained in military service during the relevant period, Section 525, by its plain terms, has tolled petitioner's right to redeem his property in Danforth, Maine. The state court therefore erred in denying petitioner that right.

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[22] The Fourth Circuit, in an unpublished opinion, recently accepted the government's argument that Section 525 cannot be invoked without a showing of prejudice in an action to correct military records under 10 U.S.C. 1552. *Townsend* v. *Secretary of the Air Force*, 947 F.2d 942 (1991) (Table). We note that the present case does not present the question whether Section 525 applies when Congress enacts a statute of limitations that explicitly governs the right of a service member or former service member to file suit. Cf. *Mouradian* v. *John Hancock Cos.*, 930 F.2d 972, 973-975 (1st Cir. 1991) (per curiam) (applying the specific military service tolling provision in the NLRA's statute of limitations, 29 U.S.C. 160(b), rather than applying general provisions of Section 525), cert. denied, 112 S. Ct. 1514 (1992). We also note that this case does not raise the question whether a defense of laches is available even if Section 525 precludes application of the statute of limitations.

CONCLUSION

The judgment of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted.

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No. 91-1353

In The

Supreme Court of the United States

October Term, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., ET AL.,

Respondents.

On Writ Of Certiorari To The
Supreme Judicial Court Of Maine

BRIEF OF AMICUS CURIAE VETERANS OF FOREIGN WARS OF THE UNITED STATES IN SUPPORT OF PLAINTIFF-PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE VETERANS OF FOREIGN WARS OF THE UNITED STATES

The Veterans of Foreign Wars of the United States ("VFW") is a nationally known and congressionally chartered membership corporation. 36 U.S.C. §§ 111-120.[1] Its membership has grown to over 2.2 million veterans, all of whom have served in the Armed Forces in foreign wars or expeditions outside the United States and many of whom are still in active military service. Members of the VFW are vitally concerned with issues relating to veterans, whether those veterans were discharged in 1945 or are presently on active duty, and are particularly concerned that laws intended to protect veterans are fully implemented and enforced.

In furtherance of the purposes set forth in its Congressional Charter, 36 U.S.C. § 113, and pursuant to its motto "Honor the Dead by Serving the Living," the VFW provides a wide range of services to member and non-member veterans, including veterans on active duty, through its National Veterans Service program.

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[1] To the extent required by Supreme Court Rule 29.1, VFW discloses that it has one wholly owned subsidiary, VFW Marketing Inc., a Missouri corporation. Associated with the Veterans of Foreign Wars is its auxiliary organization, the Ladies Auxiliary to the Veterans of Foreign Wars of the United States, which is a separate membership association with over 600,000 members. In addition, VFW, pursuant to 36 U.S.C. § 114, issues charters to local posts, county councils, districts and state departments. They are not subsidiaries, conglomerates or affiliates, but are related to VFW in the manner prescribed in VFW's federal charter and in VFW By-Laws.

Additionally, the VFW, through its National Legislative Service, monitors Congressional activity on legislation vital to veterans and acts as both a conduit, through which its members are kept informed on the issues, and an amplifier, so that the voice of veterans can be heard on Capitol Hill. VFW has supported many legislative initiatives to assist active duty military personnel, including the Soldiers' and Sailors' Civil Relief Act ("SSCRA"). VFW and its members are alarmed when those statutory initiatives are undermined by unwarranted judicial intervention. Other critical legislation affecting veterans may be the next target.

Finally, as an organization concerned with maintaining this nation's security, the VFW is interested in assuring that the Armed Forces of the United States have well-trained and highly motivated men and women ready, willing and able to serve the cause of their country and fight, if necessary, to preserve and extend its freedoms. Thus, VFW is interested in protecting the rights of those veterans in active military service and assuring that those called upon to shoulder the burden of the nation's defense in the future are afforded a full measure of statutory protection from the vagaries and inequities of that service.

The Soldiers' and Sailors' Civil Relief Act is an integral part of that protection. Veterans recognize, above all others, the dislocation of personal life, the loss of years of productive and potentially more remunerative employment and the financial hardship that have characteristically accompanied military service. VFW believes that, if the rights afforded under the Act are to be taken

away or diluted, it should be by the clear and unmistakable mandate of Congress and not by a misdirected judicial pronouncement so imprecise in its terms and effect as to leave neither the serviceman nor his creditor with an unambiguous rule by which individual circumstances can be measured. If the statutory protections afforded to our servicemen and veterans are to be eviscerated, it should be done in the single forum of the Congressional legislative process, where all affected parties can participate, and not piecemeal by judicial interpretation in private litigation.

SUMMARY OF ARGUMENT

If the decision of the Supreme Judicial Court of Maine is upheld, this Court will have acquiesced in a serious and substantial erosion of a valuable right specifically mandated by Congressional action. The terms of that right are clearly and unequivocally stated in § 525 of the Soldiers' and Sailors' Civil Relief Act. The Maine courts blatantly disregarded the unambiguous terms of the Act and, by their hand, attempted to rewrite the statutory provision so as to include a condition precedent not enumerated in, nor contemplated by, the statute.

It is a salutary rule of judicial construction, and a first principle of judicial restraint, that clear and unambiguous language will be enforced in accordance with its plain meaning. More is the need to follow that principle when it is to be applied to servicemen, because this Court has traditionally construed even ambiguous statutes so as to favor servicemen as the beneficiaries of such legislation.

The Supreme Judicial Court of Maine, and other courts bent on rewriting Congressional mandates, must not be allowed to cast aside the deference due Congressional Acts and take from our veterans the rights unambiguously provided to them by law. That is particularly important with respect to matters affecting the maintenance of our Armed Forces, a matter vested by our Constitution in Congress and not the courts. Amicus respectfully submits that, if the law is to be changed, Congress, and not the courts, should change it. This Court should reverse the decision of the Maine courts and leave Congress to decide if an amendment to the SSCRA is necessary or appropriate.

ARGUMENT

A. SECTION 525 IS UNAMBIGUOUS AND SHOULD BE ENFORCED AS WRITTEN

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942

> be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

The statute is clear and unambiguous. Indeed, neither the trial court nor the Supreme Judicial Court of Maine even hint that it is ambiguous.

In *King v. St. Vincent's Hospital*, 502 U.S. ___, 112 S. Ct. 570, 575 n.14 (1991), this Court, citing *Rubin v. United States*, 449 U.S. 424, 430 (1981), noted that "when we find the terms of a statute unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances." *See also Freytag v. C.I.R.*, 501 U.S. ___, 111 S. Ct. 2631 (1991); *Norfolk and Western Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. ___, 111 S. Ct. 1156 (1991); *Burlington Northern R. Co. v. Oklahoma Tax Comm'n.*, 481 U.S. 454, 461 (1987). Here, just as in *King*, no such circumstances are present. The trial court and the Supreme Judicial Court of Maine improperly looked beyond the plain meaning of the Act, and unfairly read into its provisions conditions and classifications not included by Congress.

Section 525 of the SSCRA could not more accurately and definitively state the law. There is no requirement that, in the case of career servicemen, they must show hardship caused by active duty in order to claim the rights afforded by that Section. *See Mason v. Texaco, Inc.*, 862 F.2d 242, 245 (10th Cir. 1988); *Ricard v. Birch*, 529 F.2d 214, 217 (4th Cir. 1975).

In *Bickford v. United States*, 656 F.2d 636, 639-40 (Ct. Cl. 1981), the United States Court of Claims correctly held:

The express terms of the SSCRA make certain that the tolling of the statute of limitations is unconditional. The only critical factor is military service; once that circumstance is shown, the period of limitation is automatically tolled for the duration of service. *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975). We do not accept the Government's argument that the court should ignore the express language of § 525.

> There is not [sic] ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA, as in §§ 510, 517, 521-24, and 530, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability. The existence of explicit conditions throughout the SSCRA, and the absence of conditional language in § 525, manifests the limited meaning of that section.

Id.; *See also Ray v. Porter*, 464 F.2d 452, 455 (6th Cir. 1972); *Wolf v. Commissioner of Internal Revenue*, 264 F.2d 82, 87-88 (3d Cir. 1959).

The courts below were bound to apply and enforce the law as written. That is, the statutory protection is to be provided to "*any* person in military service," without condition and without classification. The classification and condition precedent imposed by the Maine courts are

inconsistent with the unambiguous Congressional mandates of § 525. Those courts clearly concocted a judicial means to meet the end they thought best.

As recently as 1991, this Court declined to "tinker with the statutory scheme" unambiguously providing a benefit to military personnel. In so doing, this Court noted that, even if the language of the statute were unclear, "we would ultimately read the provision in [the serviceman's] favor under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King v. St. Vincent's Hospital*, 112 S. Ct. 570, 574 n.9; *Fishgold v. Sullivan Dry Dock & Repair Corp.*, 328 U.S. 275, 285 (1946); *See also Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977).[2]

It follows, *a fortiori*, that the legal principle requiring the construction of an ambiguous provision in favor of a

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[2] The instruction of the United States Supreme Court to construe favorably provisions benefitting military personnel and veterans has been consistently applied in cases throughout the country. *See, e.g., United States v. Onslow County Bd. of Educ.*, 728 F.2d 628, 636 (4th Cir. 1984); *United States v. City of Highwood*, 712 F. Supp. 138, 140 (N.D. Ill. 1989); *Cruz v. General Motors Corp.*, 308 F. Supp. 1052, 1056 (S.D.N.Y. 1970); *United States v. Chester Co. Bd. of Assess. & Rev. of Taxes*, 281 F. Supp. 1001, 1003 (E.D. Pa. 1968); *Thompson v. Reedman*, 201 F. Supp. 837, 838 (E.D. Pa. 1961); *United States v. North Am. Creameries*, 70 F. Supp. 36, 39 (S.D.N.D. 1947); *Karas v. Klein*, 70 F. Supp. 469, 471 (D. Minn. 1947); *United States v. State of Illinois*, 387 F. Supp. 638, 641 (E.D. Ill. 1975); *Foremsky v. United States Steel Corp.*, 297 F. Supp. 1094, 1097 (W.D. Pa. 1968); *Foster v. Dravo Corp.*, 395 F. Supp. 536, 538 (W.D. Pa. 1975); *Taylor v. Southern Pac. Co.*, 308 F. Supp. 606, 609 (N.D. Cal. 1969).

serviceman lends even greater strength to the proposition that a court may not "tinker" with the construction of an Act, barren of ambiguity, which is intended to benefit servicemen. If the language of § 525 was ambiguous, the Maine courts would have been bound to construe it most favorably to military personnel. Where, as here, no ambiguity exists and no judicial construction was warranted, it is utterly incongruous to have construed the language of § 525 in a light detrimental to those in the Armed Forces.

The principle upon which this Court relied in *King* is not new. That principle has been applied in construing the language of the SSCRA. In *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948), citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943), this Court stated that "the Act must be read with an eye friendly to those who drop their affairs to answer their country's call". The trial court in Maine cavalierly suggests that this language demonstrates that the statute is designed to protect only "non-career military personnel," as if career military personnel have not "dropped their affairs to answer their country's call."

Amicus submits that the tolling provisions of § 525 were, in part, enacted in recognition of the fact that the exigencies of military service render it burdensome and, at times, impossible for servicemen to adequately protect their rights. The difficult and oftentimes dangerous business of preparing for and conducting military operations, whether in time of war or during the prolonged period of heightened tension this country has known since World War II, demands the kind of attention few of us must

devote to civilian employment and detracts from a serviceman's consciousness of other, perhaps less immediate, problems. It can be difficult for a serviceman to focus on whether his real estate taxes have been fully paid when he is 8,000 miles from home, working nineteen hour days and concerned about whether the contacts on his radar screen are displaying hostile intent. Frequent transfers, unanticipated deployments and overseas assignments complicate management of their personal affairs. Events in the recently completed Gulf War demonstrate how quickly our military personnel are expected to "answer the call" and how their lives can be changed dramatically in a few short weeks. Those burdens of military service are not limited to non-career service, but apply as well, and just as urgently, to career military personnel. Those are the burdens Congress undoubtedly sought to ameliorate.

This Court is faced with a state court decision which skewers and contorts the unambiguous language of Congress in order to restrict the protection provided to military personnel in § 525. Despite the statute's unambiguous language, the Maine courts have artificially implanted a condition precedent to that protection. That decision is contrary to the plain meaning of the statute. Moreover, the decision is contrary to the principle that the courts should read and construe statutory language in favor of those who protect this country and its people. The clear and unmistakable language of the statute should not be cast aside in favor of some judicially determined definition of "career military" and "sliding scale" assessment of "hardship".

B. THIS COURT MUST ACCORD GREAT DEFERENCE TO CONGRESSIONAL DECISION-MAKING IN MATTERS INVOLVING MILITARY AFFAIRS

When this Court is called upon to review any Act of Congress, it accords "great weight to the decisions of Congress." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 102 (1973). However, this is not simply a case involving the commonly-bestowed deference accorded a Congressional decision. Instead, this case "arises in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the court accorded Congress greater deference." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981); *McCarty v. McCarty*, 453 U.S. 210, 236 (1981).

The great deference afforded Congress in military matters is based upon the premise that the "constitutional power of Congress to raise and support armies and to make all laws necessary and proper to that end is broad and sweeping." *United States v. O'Brien*, 391 U.S. 367, 377 (1968); *See also Lichter v. United States*, 334 U.S. 742, 765-66 (1948). This Court has made it clear that, with respect to military matters and those involving national defense, it is not for the States nor the courts to interfere with the goals enunciated by Congress. Rather, those are issues for Congress to decide.

Here, Congress has decided that the SSCRA protects a member of the Armed Forces, during military service, from seizure and sale of his real property for unpaid taxes on that property. Congress specifically decided that the protection be provided to "*any* person in military

service," without condition and without classification. As this Court stated, with reference to military pensions, in *McCarty v. McCarty*, 453 U.S. at 236, "Congress has weighed the matter and it is not the province of state courts to strike a balance different than the one Congress has struck." The Maine courts have ignored the mandate of Congress and attempted to strike a different balance. If the fulcrum is misplaced, Congress, and not the courts, are the proper agent to move it.

In *Rostker*, 453 U.S. at 65, this Court recognized that, in addition to the broad scope of Congress' constitutional power in military matters, greater judicial deference must be afforded Congress in affairs of the Armed Forces because "the lack of competence on the part of the courts is marked." Quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973), the *Rostker* court noted:

> It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the legislative and executive branches.

Rostker, 453 U.S. at 65-66 (*also* citing *Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953); *Simmons v. United States*, 406 F.2d 456, 459 (5th Cir.) *cert. denied*, 395 U.S. 982 (1969)).

Fifty years have passed since the SSCRA, as presently constituted, was enacted. Both the world and our military forces have undergone dramatic change during that time, and, for the first time, our nation has been required to maintain large, permanent and professional Armed

Forces. Thus, Congress has recruited and continues to sustain a cadre of career military personnel necessary to protect the nation's interest. Presumably, Congress has weighed whether the protections of § 525 are a necessary part of the statutory package required to attract and keep quality personnel. Additionally, Congress is far better equipped than the courts to weigh and consider the hardships of military life and the impact it can have on a serviceman's ability to protect his interests.

As was stated in *Bickford v. U.S.*, 656 F.2d 636 (Ct. Cl. 1981):

> More than 60 years have lapsed since Congress first enacted § 525. If there was discontent with the post-war application of § 525, Congress could have either repealed or amended it. Despite a major revision of the SSCRA in 1942, Congress left § 525 untouched and subsequently, has never sought to insert any type of limiting language conditioning its application.
>
> Finally, if we are wrong, and Congress did not intend § 525 to cover all active duty military personnel, Congress is always free to amend and revise the SSCRA. Given this nation's constitutional allocation of law making power to Congress and not to the judiciary, it would be much more appropriate to respect the plain meaning of § 525, and leave it to Congress to make any changes it thinks necessary. Our holding today allows the court to respect the most fundamental of all canons of statutory construction: that statutes mean what they plainly say.

Bickford, 656 F.2d at 640.

We must assume that Congress, in furtherance of its constitutional duty and aware of the impact of § 525 as part of the benefits afforded military personnel, has determined that the provision is necessary for the welfare of our servicemen.

CONCLUSION

As an organization that has been in the forefront of the fight for legislation to provide for veterans, VFW knows how difficult it is to bring about the enactment of favorable laws and to protect those laws from legislative encroachment. It is far more difficult to protect against adverse decisions by courts which choose to ignore the plain language of statutes and embark upon a policy at odds with the statutory scheme. If courts are permitted to treat the plain provisions of the SSCRA with so little regard, they may take the same approach to other legislation designed to benefit our nation's veterans.

This court should make it clear that, where a statute is designed to protect or benefit those that have defended their country and the language of the statute is not reasonably subject to contrary interpretation, the statute must be given effect according to its terms. If the statutory scheme should be reassessed in the light of

modern developments, Congress should make that assessment.

Respectfully submitted,

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